



AgEcon SEARCH

RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search

<http://ageconsearch.umn.edu>

aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

No endorsement of AgEcon Search or its fundraising activities by the author(s) of the following work or their employer(s) is intended or implied.

FEB 14 1964

HE
152
A52
1963

UNIVERSITY OF MICHIGAN
4
TRANSPORTATION
LIBRARY

Papers —

Fourth Annual Meeting

**December 26, 27, 28, 1963
Boston, Massachusetts**



TRANSPORTATION RESEARCH FORUM

Generated at University of Minnesota on 2021-09-23 16:08 GMT / https://hdl.handle.net/2027/mdp.39015023117818
Creative Commons Attribution-NonCommercial-NoDerivatives / http://www.hathitrust.org/access_use#cc-by-nc-nd-4.0

*Marvin L. Fair**

Problems of Airline Mergers

For the past 12 years we have had in the air carrier industry the anomaly deterioration in earnings ratios of a growth industry which is enjoying a rapid technological advance. In spite of larger gross earnings the financial situation has worsened during the last four years, although some have improved in recent months, others continue in a state of crisis or near crisis. Between 1958 and 1961 the total operating revenues increased about one third, going from \$1.5 billion to \$2.0 billion which operating expenses increased by 44 per cent, rising from \$1.4 billion to \$2.0 billion.

The analysis of this paper will be confined to the domestic trunk line operations. The table below gives some detail on the trend of ton-mile revenue, ton-mile expense and net income after taxes for twelve truck lines beginning with 1955.

Some of the most significant mergers have occurred since 1949, including Braniff-mid-Continent and Delta-Chicago and Southern in 1952; Continental-Pioneer in 1954; Eastern and Colonial in 1956 and United-Capital in 1961. The number of trunk lines has been reduced from a prewar 16 to 11 in 1963.

The principal Sections of the Federal Aviation Act which provide the legal basis for C.A.B. action in respect to consolidation include Section 102 setting forth the general policy directive given in the original act of 1938, Section 408 respecting approval of specific merger proposals, Section 414 exempting approved mergers from Section of the Clayton Act and Section 401 (g) which permits the C.A.B. to change route authority which might be called for to make a merger acceptable.

Section 102 sets forth some of the considerations which should guide the Board in promoting the public interest and reads as follows:

“In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

“(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

“(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

**American University*

NET INCOME AND UNIT REVENUE AND EXPENSE
 DOMESTIC TRUNKLINES, 1955-1962

	1955	1956	1957	1958	1959	1960	1961	1962
AMERICAN								
Revenue per revenue ton-mile	50.2	50.3	50.3	52.4	55.1	56.1	56.5	55.7
Expense per revenue ton-mile	42.6	44.0	47.4	47.9	51.5	52.8	53.9	53.3
Net income after taxes (000)	18,201	19,205	10,677	16,149	21,101	12,150	7,449	8,447
EASTERN								
Revenue per revenue ton-mile	50.4	50.7	53.3	57.0	58.6	60.9	60.0	66.4
Expense per revenue ton-mile	43.7	44.7	51.5	54.5	56.0	62.2	65.6	71.3
Net income after taxes (000)	12,487	12,962	11,368	6,108	8,522	(3,701)	(10,067)	(14,425)
UNITED								
Revenue per revenue ton-mile	50.5	49.8	49.8	52.2	53.6	55.4	57.5	59.1
Expense per revenue ton-mile	45.8	45.5	47.9	46.7	50.4	54.0	56.8	57.6
Net income after taxes (000)	10,140	13,710	6,963	13,407	12,410	8,487	703	3,348
TWA								
Revenue per revenue ton-mile	48.8	48.17	49.15	52.8	54.7	55.2	55.5	57.1
Expense per revenue ton-mile	45.6	45.5	47.9	46.7	50.4	54.0	61.1	58.6
Net income after taxes (000)	4,812	(1,943)	(1,940)	2,046	13,886	(321)	(24,996)	(12,499)
BRANIFF								
Revenue per revenue ton-mile	60.9	58.4	58.3	61.4	63.4	64.8	64.1	64.5
Expense per revenue ton-mile	54.9	54.0	54.3	54.6	58.2	62.0	60.9	58.9
Net income after taxes (000)	2,025	1,677	1,453	3,243	2,639	1,147	1,968	3,787
CAPITAL								
Revenue per revenue ton-mile	58.5	59.6	61	64.7	64.4	65.5		
Expense per revenue ton-mile	57.9	62.4	59.9	62.6	64.3	69.5		
Net income after taxes (000)	4,136	(1,257)	(2,870)	(437)	(1,757)	(10,078)		
CONTINENTAL								
Revenue per revenue ton-mile	64.3	64.9	60.8	64.2	65.8	64.7	63.9	68.0
Expense per revenue ton-mile	64.1	63.4	59.5	61.9	60.2	57.9	58.9	58.2
Net income after taxes (000)	396	710	491	(132)	1,700	1,705	1,121	1,779

PROBLEMS OF AIRLINE MERGERS

DELTA

Revenue per revenue ton-mile	55.5	54.7	54.3	57.4	59.9	63.6	64.2	62.1
Expense per revenue ton-mile	48.3	59.6	51.5	52.9	56.8	59.0	58.7	52.6
Net income after taxes (000)	3,067	3,989	1,621	3,239	2,733	2,440	478	5,512

NATIONAL

Revenue per revenue ton-mile	49.4	40.2	42.4	55.1	56.1	58.2	58.6	58.4
Expense per revenue ton-mile	41.8	42.0	50.3	52.3	56.5	64.3	58.9	50.4
Net income after taxes (000)	3,349	4,425	989	1,136	(536)	(4,528)	(2,358)	7,498

NORTHEAST

Revenue per revenue ton-mile	75.3	75.1	59.8	58.1	59.5	64.4	65.9	66.9
Expense per revenue ton-mile	87.9	92.7	80.5	72.8	70.3	74.6	76.2	75.3
Net income after taxes (000)	380	(300)	(4,324)	(3,670)	(7,062)	(10,814)	(9,442)	(9,450)

NORTHWEST

Revenue per revenue ton-mile	52.6	40.2	50.6	53.1	53.6	54.4	59.8	59.0
Expense per revenue ton-mile	47.7	47.9	50.6	50.1	51.1	53.2	59.7	54.3
Net income after taxes (000)	2,254	1,901	642	2,137	3,119	1,230	83	2,631

WESTERN

Revenue per revenue ton-mile	56.4	58.1	56.9	60.5	62.2	64.1	64.2	63.3
Expense per revenue ton-mile	48.5	52.8	50.1	58.0	50.7	58.3	62.6	56.4
Net income after taxes (000)	\$ 1,982	\$ 3,044	\$ 2,479	\$ 1,568	\$ 4,954	\$ 2,351	\$ 655	\$ 3,729

SOURCE: Civil Aeronautics Board, Air Carrier Traffic Statistics and Quarterly Report of Air Carrier Financial Statistics, 1955-1962.

"(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

The significant phases in the frame of reference of this paper relate to "encouragement and development of an air transportation system," the "fostering of sound economic conditions" and having "competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs" of the nation.

Section 408 (b) states that;

"Unless, after such hearing, the Board finds that the . . . merger . . . will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such . . . merger . . . upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe; Provided, That the Board shall not approve any . . . merger . . . which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the . . . merger . . ."

The exemption to Anti-Trust is broad and along the lines which apply to all regulated carriers, but the Board has felt compelled to give weight to Section 7 in the merger sections.

Section 401(g) giving overall powers to alter certificates after hearing and if in the public interest, makes it possible for the Board to make surrender of certain route awards of the carriers involved as a condition of approval of merger.

Compelling Factors

The profit margin squeeze since 1955 appears to be the prime factor in precipitating recent merger activities. Seat-mile and ton-mile costs anticipated from conversion to large jet aircraft have not been realized apparently because of increased wage rates for operating personnel, management problems of adjustment to operation of jet aircraft, and because of lower load factors. The increase in seat-mile and ton-mile capacity incident to conversion, which exceeded the increase in traffic, served to intensify competition beyond that resulting from generous in extended routes by the C.A.B. since 1955.

According to Edward T. Chase, the regulatory policy reflects not so much a zeal for competition by the C.A.B. as its efforts to preserve a weak carrier by extension in the profitable market only to dilute it for all competitors¹ Some awards do seem to support this statement. Whatever the purpose seat-mile capacity outran passenger-miles to a substantial degree between 1955 and 1962. The table below shows the trend by year. The result was that during the eight year period seat miles increased by 103% while revenue passenger-miles increased only 62%.

¹ Edward T. Chase, Economic consultant. "Crisis Behind the Transportation Mergers." *Sat. Rev.* Vol. 45:19-21

The prospect of meeting investment requirements in the immediate future are indeed not good. According to CAB the return on investment declined from 2.8% in 1960 to 1.5% in 1961. In this same year the Board held that 10% for the Big Four and 11.125% for the other trunk lines was desirable for good financial health.

With the prospect of another technological revolution only a few years hence, it is little wonder that merger proposals and rumors of mergers of air carriers have been so much in the limelight for the last two years or so. Consolidation and merger has always characterized a growth industry in this nation and financial stress in such an industry is certain to precipitate them.

In this paper we are concerned with the factors precipitating combination, obstacles to it, C.A.B. legislation directives bearing upon it, its policy in administration, and some criteria that should prevail in reshaping the nations domestic airline route structure in the public interest.

The fact that the expense per available seat-mile for most of the carriers has increased in spite of the alleged low seat-mile costs to be expected from large jet planes, suggests that airline management for these carriers may be partly at fault in making a satisfactory adjustment to a new level of financial and operational conditions. It is interesting to note that both of the carriers which reduced ton-mile expense during the last two years are middle sized carriers. The industry has not been conspicuous as a first runner in the recruiting or training of young management personnel as one would expect it to be. However, the Examiner was probably correct in his report on the American-Eastern Airlines merger proposal when he observed that "Excess capacity is the primary ill in the system, which is conceded on all sides."²

Mergers have characterized the development of the airline system. The C.A.B. has handled over 50 applications since it began operation in 1938. These include trunk line mergers, trunk-local line mergers and local line mergers.

REVENUE PASSENGER-MILES AND AVAILABLE SEAT-MILES

Domestic Trunklines

1955-1962

	Revenue Passenger miles (000,000)	Available Seat miles (000,000)
1955	19,852	31,371
1956	22,399	35,366
1957	25,379	41,746
1958	25,375	42,724
1959	29,308	48,405
1960	30,557	52,220
1961	31,062	56,087
1962	33,623	63,887

² Docket 13355, C.A.B. Recommended Decision of Ralph L. Wiser; Hearing Examiner, Nov. 27, 1961. p. 61

SOURCE: Civil Aeronautics Board, *Air Carrier Traffic Statistics, 1955-1962*.

Its an old story in transportation that when advancing technology provides larger and faster vehicles that the relative economy and service advantage of long hauls increase. Airlines have for competitive reasons felt compelled to buy large jet equipment, e.g. Boeing 707 or D.C. 8 aircraft, which are economically feasible over reasonably long stage lengths of 1000 miles or more, whereas the average stage length for most of the trunk lines is no more than half of this distance. Western whose stage length is better than some others gave the need of more economic use of its 707's in seeking extension to Hawaii. Merger permits a solution without intensifying an already over competitive situation through extensions.

The financial requirements for trunk line operation have multiplied in this jet age and they promise to multiply again in a few years because of conversion to supersonic aircraft, which in turn will present new problems of aircraft utilization to operating managements.

Briefly how has the Board interpreted these compelling factors and its legal directives in regard to mergers in the post-war period?

Criteria Employed by C.A.B. in Merger and Control Cases

The compulsion of far reaching adjustments in the new jet age, led Chairman Boyd early in 1961 to state that if the Board is to do its job, it cannot await the vagaries of the market place to pose the possible alternatives to today's pattern.³ He felt that adjustment to today's realities called for a more tightly knit route operation. This suggestion for an overall approach to the Board's policy in consolidation created much criticism. The opponents questioned the right of the Board to use this approach and even if it were legal, questioned the need to do so. A liberal interpretation of Section 102 which places the obligation of the board over the air system of the nation would seem to permit, if not to justify, this approach.

The board had refrained from specifying a grand plan or plans and has dealt with merger problems on a case by case approach. The Board stated in American Airlines control of Mid-Continent Airlines Case that: "Whether the proposed requisition and or merger is consistent with the public interest cannot be measured by a single factor but must be determined from weighing all consideration."⁴ No general policy or set of governing criteria have been adopted as such. However, the Board in the past twenty years has approved more significant applications than it has denied and in these control and merger cases has mentioned one or more of the following considerations:

1. Will substantial integration of operations result?
2. Is there extensive interchange of passengers?
3. Will it substantially reduce competition and create monopoly of some markets or result in undue dominance over a large portion of market areas?
4. Will it cause substantial injury to other carriers?
5. If injury is to local carriers would it increase subsidy burden to the tax paying public?

³ Chairman Allen Boyd of C.A.B. in address of Feb. 28, 1961

⁴ 7 C.A.B. 365,372 (1946)

6. Is the purchase price satisfactory?
7. Are the interests of labor protected adequately?
8. Is there sufficient comparability of equipment to assure savings in maintenance and operation?
9. Is there financial distress of one carrier?
10. Will competition become undue?

The board denied the application of the American Airlines to control Mid-Continent in 1946 because the amount of integration and coordination to be realized was insufficient and that other carriers would be injured by the probable diversion of traffic. The two reasons stressed seem hardly com-
pactable.

The application of the North-Central and Lake Central in 1957 was denied also because of inadequate integration.

The Southwest-West Coast merger proposal was denied because the effect would have been to enable the two local lines to compete with trunk lines for trunk line traffic, creating uneconomic competition.

The recent denial of the American-Eastern merger was essentially on the basis of substantial reduction of competition in many market areas and in the undue dominance in the whole national market which would result, amounting to a third of the air line business.

Reshaping the Airline Structure

Two developments in C.A.B. policy in 1961 raised profound questions about what reshaping of the airline structure lies ahead and what it should be in the public interest. These developments were the extension of Delta and National Airlines to the west coast making them true transcontinentals along with American, United and TWA, and the approval of the United-Capital merger making United into a great "L" shaped system serving east-west and north-south merged traffic routes. The demise of Capital, the collapse of Northeastern and the difficulties of Eastern raises serious doubts in regard to the economic future of so called regional airlines even though Continental and Western are doing relatively very well. However, these lines enjoy extended routes from the far west centres to Chicago and other East Central centres with a large proportion of relative long stage services and favored apparently by management that has been able to step up utilization of the jets to lower the break-even point below attainable load factors. Are we headed for fewer trunk lines all of which will be transcontinentals with important north-south routes and feeder lines to make each less dependent on other trunk lines to attain adequate and well balanced traffic and adequate load factors for large planes in all longer routes? Would such a development largely solve our local airline problem because of the competition for feeder services?

Then comes the question of how many should there be—as many as six or seven or as few as two coextensive carriers serving the entire nation in domestic service or perhaps domestic and international combined? What sort of air system can best serve eight years hence and stand the impact of the supersonic jet revolution in aircraft?

The Issue of Competition

The recent low earning on investment of the industry and the opposition and problems faced by C.A.B. in merger matters make it doubtful if the present systems can stand the impact of conversion to supersonic operations. First and foremost of the problems in a major restructuring of the airline systems is the threat of monopoly and reduced competition. Second is the awkwardness of reliance on a case by case approach with strong objections to be expected from all competing trunk and local lines. Third, is the certain opposition of labor unions. These problems stood out in both of the recent major cases, namely, the United-Capital and the American-Eastern. Northwest and Continental feared that United's absorption of Capital would open the door to absorption of the smaller trunk lines. Delta and Eastern also opposed it because of excessive diversion but the Board held that the merger did not violate Section 408 (b) even though the combined system would provide about 25 per cent of the nation's domestic trunk-line air service. The Board stressed the "In Extremis" or "failing business" doctrine in interpreting the public interest in this case, referring to the Supreme Court decision in the International Shoe Case.⁵ Through service between Harrisburg and New York and between Harrisburg and Pittsburgh were denied to protect subsidized Allegheny and between Buffalo and Detroit to protect subsidized Mohawk. This abridgement of Capital's route authority, the Board held, would not jeopardize the merger.

The Boards denial of the Eastern-American merger held that the degree of dominance of market areas of approximately one third of domestic air trunk service of the nation would not be in the public interest. While Eastern's financial position was serious it did not justify application of the in Extremis doctrine.

What is a realistic concept of competition which is essential in a program of integrating the air line system?

I believe that few transportation economists would take exception to The Examiner's statement in his Report on the American-Eastern proposed merger. He pointed out that air line competition involves not only interline competition but competition with other air carriers and with other modes of transportation. Referring to the nature of air carrier competition he said:⁶

"While competition is desirable where economic, air transportation is obviously not a business which can have the sometimes-called classical competition, wherein the output of each producer is effected without consideration of what other producers are doing. The volume of traffic and the nature of air transportation put it out of the question that there could be enough carriers for that. Even the most heavily traveled markets can support only a few carriers."

He went on the say that "no analysis has been made herein from which it can be determined whether the number of carriers in the air transport industry is the same or greater than there would be if the industry were unregulated."⁷

⁵ 280 U.S. 291 (1930)

⁶ Examiner's Report, Docket 13355—p. 60.

⁷ *Ibid.* p. 61

G. T. Baker, President of National in response to "Airlifts" inquiry mentioned the danger of too much government sponsored competition. He pointed out that only a few years ago there were in Tampa, Florida, two airlines but that now there were seven with an average load factor of 25 per cent in service to and from that city. He went on to state that a second carrier makes for effective competition but that the addition of the third, fourth or fifth seldom adds significant further improvements in service for the public.⁸

In consolidating directly competitive route service, there will be some reduction of services to marginal markets. This problem in some instances could be alleviated by integration of local and trunk line operations.

Integration

The Board in dealing with merger developments has very properly stressed route integration as a control criterion. This requirement is implicit in terms of the concept of an air line system and in preserving of effective competition. The Examiner in the United-Capital report pointed out the route integration in such cases, includes improved flight equipment and personnel as well as savings from reduced duplication and general administration expense. It does not require that each segment of a system should contribute traffic to every other segment.⁹

Protection of Labor

The problem of protecting labor has become a major problem of airline consolidation. The basic act does not specify any protective measures as we find in the Interstate Commerce Act respecting railroad mergers. However, the Board has voluntarily embraced far reaching protection in its interpretation of public interest respecting a merger control. The Board first imposed labor protective provisions in the United-Western Transfer of Route 68 in 1950. It was recognized in the Delta merger with Chicago and Southern in 1952 and dealt with at length in the United-Capital merger. The policy is based on the so-called Burlington Formula developed by the Interstate Commerce Commission with some modifications. In the Braniff-Mid Continent Case of 1952 the Board added certain features of the Washington agreement of 1936. In each subsequent case some changes have been made.

In the United-Capital merger the protective measures included requirements that United would offer employment without pay reduction and equal terms to all Capital employees and that it would retain all of its present employees. Further the Board recited its labor protection formula including rules regarding inclusion of overtime in the base used for determination of displacement allowances, fringe benefits, loss from required change of residence, notice of changes in labor force (45 days).

All in all the Board has built for itself a formidable barrier to mergers in respect to protection of labor, compulsory featherbedding is not conducive to the development of the optimum air transportation system.

Other obstacles, which because of limits of time and space permit brief mention only, but which are important are:

1. Political resistance not only from the Department of Justice which is

⁸ Airlift, "Do Small Trunks Have a Chance," Aug. 1960, p. 20-27

⁹ Examiners Report *Supra* cit. p. 18

inclined to look upon any merger as "sin" but from Congress whose members are subject to local pressures reflecting more local pride than understanding of the economics of a changing set of realities in air transport.

2. Air line management officials are disinclined to merge themselves out of jobs.

3. Airlines not party to a merger are likely to oppose it if it is a major one. They fear the creation of a larger competition and are inclined to exaggerate the diversion which might result.

4. The long time required to process merger applications has a bad effect on employee morale and with the costs incident to hearings serves as a deterrent to merger proposals.

In the President's message on transportation of April 5, 1962, he referred to the need for criteria in the handling of proposals for consolidation of the railroads and the airlines. Later in the year he set up an Interagency Committee on transport mergers consisting of the Under Secretary of Commerce for Transportation as chairman. Dr. Walter H. Heller of the Council of Economic Advisers, Lee Loevinger, Assistant Attorney General, Anti-Trust Division, Department of Justice and James J. Reynolds, Assistant Secretary of Labor. In giving the Committee its assignment the President set forth broad criteria as a frame of reference for their work. These criteria were as follows.

"(1) Effective competition should be maintained among alternative forms of transportation, and, where traffic volume permits, between competing firms in the same mode of transportation.

"(2) The goals of economical, efficient, and adequate service to the public—and reduction in any public subsidies—should be secured by the realization of genuine economies.

"(3) Affected workers should be given the assistance to make any necessary adjustments caused by the merger."

In the introduction, the Report the committee referred to the fact that severe problems of adjustment to changing economic and technological conditions, and to the fact that the leaders of these industries in seeking constructive means of solving their problems have turned to mergers as one of the possible opportunities for improvements in earning power and technical performance, including cost saving.

The committee as a result of its deliberations published on Wednesday, March 6, 1963, its report which included ten criteria which are summarized as follows:¹⁰

1. Will the proposed merger restrict effective competition in the provision of transportation services in the areas affected?
2. Will the proposed merger permit an economically more efficient use of resources, through fuller utilization, over a period of time, of plant and equipment and/or reduction in direct costs per unit of output, which will reduce costs while maintaining or improving the general quality of service offered to users?

¹⁰ Report of the Interagency Committee on Transport Mergers, White House release Wednesday, March 6, 1963

3. Can the economies sought by the proposed merger be achieved by alternatives more easily revocable which promise to be of comparable effect in accomplishing the improvement in over-all efficiency.
4. Will the cost and quality benefits resulting from the merger be reflected in benefits to the public?
5. Will the proposed merger, with the increased market power of the merged carrier, have substantial undesirable repercussions on other carriers in the industry?
6. Will the proposed merger serve the long-run interests of both the public and the carriers concerned, or is it merely an attempt to meet a short-run crisis arising either because of unfavorable economic conditions in general or a particular transitory problem?
7. Is the merger proposed, in part, because of the imminent failure of one or more of the merging carriers, and is it the most appropriate solution to this difficulty?
8. Are the legitimate interests of existing creditors and equity holders of the merging carriers adequately protected?
9. Does the merger provide adequate protection and assistance to affected employees, and take into account community employment effects?
10. Will the proposed merger serve other objectives of public policy, including a reduction in public subsidies?

It is interesting to compare these ten criteria with those which we have stated above as those which the C.A.B. has employed on occasion in dealing with the applications for control and merger. Five of the criteria which the Interagency Committee recommended are among the ten recognized in the past by the C.A.B. These refer to: effective competition; the prospect of greater efficiency and reduction of cost; the effect of the merger upon other carriers in the industry; the protection of employees; and the effect of the merger upon the reduction of public subsidies if subsidized carriers are involved. The criteria which the Committee recommended and which have not been employed by the C.A.B. in its deliberations include those that refer to: consideration of whether alternatives more easily revokable and which promised to be of comparable effect in accomplishing the improvement in overall efficiency; the consideration of whether the proposed merger would serve the long run interest rather than simply serve short run interest arising from financial crisis; the consideration in regard to the protection of the legitimate interest of existing creditors and equity holders of the merging carriers. There are two additional matters that seem to be rather redundant; one is the consideration of whether the cost and quality benefits resulting from the merger reflects benefits to the public. If effective competition is maintained as provided for the first criterion and if improved efficiency, another criterion, results, then it would seem that the quality benefits to the public would be assured. Similarly item 6 states that consideration should be given to finding the most appropriate solution in the event that failure is imminent for one of the merging carriers. This is fundamentally a repetition of item 6 just preceding it.

Most important issue involved in this whole problem of policy concern-

ing consolidations is whether the public interest can better be served under the present Federal Aviation Act by employing a case by case method without reference to general criteria of structure of the airline system or whether the future decisions in regard to proposed mergers would be evaluated in terms of general criteria with respect to a revised air system structure. It would seem that Section 102 provides a choice for the Board with respect to these approaches. The approach employed by the Interagency Committee was essentially the first one, namely, the case by case approach. The ten criteria were presented as the framework for a case by case action. The first criterion on preserving competition was only a repetition of that given by the President in his directive to the Committee. I might point out, however, that this criterion wanted to know if the merger would "restrict effective competition." It would seem that the word "prevent" would have been better because any combination whether one of merger or control is bound to restrict to a degree the amount of competition. The competition may be excessive at the time of the proposal making some restriction desirable if effective competition were yet preserved. However, the discussion which accompanied the summary of the criteria indicated that the intent of the Committee was that of preserving effective competition without material reduction and that it did not intend to indicate that any restriction would be undesirable. Similarly the discussion following the summary of the criteria shed new light on the Committee conception of the approach to merger considerations. The two following paragraphs explain more adequately the Committee's position:

"In applying the criteria, specific and detailed information should be obtained and analyzed. In connection with certain criteria, statistical analysis, based on historical data and engineering and marketing and marketing projections, should be employed. Each proposed merger must be considered in the light of the possible long-run structural patterns of the industry, taking into account the transportation requirements necessary for the long-term economic development of the nation as a whole and particular regions thereof. Information as to the underlying motives for the merger of the carriers proposing it will be useful in evaluating certain criteria.

While public policy relies on the initiative of private firms in proposing and implementing specific mergers, it is not inconsistent, and is indeed desirable, for the Government to develop overall guidelines pointing to the range of acceptable structures of transportation industries deemed consistent with the public interest. Thus, continuing study of the evolving pattern of the industry, its problems and potential, will provide the appropriate background against which to evaluate particular merger proposals."

It seems rather clear that the Committee was trying to ride both horses or shall we say both approaches at the same time. I submit that this is an extremely difficult thing to accomplish.

The fact remains that the Interagency Committee gave only one criterion which would serve as a guide line for a program of structure, namely, the first one referring to the restriction of effective competition. This is definitely a criterion which can be set up to determine the character of the overall restructuring of the industry. It is unfortunate that this important Committee did not go further in giving guide lines for the restructuring of a transport

industry in which the consolidation movement is pronounced. The regulatory agencies which are conscientiously trying to act upon the proposals for consolidations and mergers, have a right to expect some framework of policy emanating from either the executive or legislative departments of the government. Such criteria should be stated in general terms allowing an area of flexibility in applying these principals to alternative structures which might be considered at a given time. The error in the provisions on the Act of 1920 respecting railroad consolidation was that the Interstate Commerce Commission was called upon to set forth a specific structure of the railroad system,— a complete consolidation plan. For a number of reasons this is not a desirable and practical approach to this problem. It is not enough to say that the agency should consider the effect upon individual carriers of a proposed consolidation. Surely broad planning in which the industry plays a full and active part should not be an ugly word in our economy.
