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VIA EMAIL

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**RE: Temporary Exemptions from Certain APPR Provisions - Application for
Revision of Determination No. 2020-122**

Dear Madam, Sir,

Air Canada hereby seeks a revision of Determination No. 2020-122 (the "**Determination**"), pursuant to Section 32 of the *Canada Transportation Act*, in which the Canadian Transportation Agency (the "**Agency**") denied Air Canada's request for an extension of the exemption from certain APPR requirements. Based on the facts provided below, Air Canada hereby seeks an exemption from:

- the requirements of subparagraphs 17(1)(a)(i) and 18(1)(a)(i) of the APPR that carriers offer alternative travel arrangements that include flights on other air carriers, ensuring that the exemption applies to all other carriers, not only those with which Air Canada has no commercial agreement; and
- the requirements to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation within carrier's control less than 14 days before their original scheduled departure, so that the requirement applies only if passengers were informed less than 72 hours before their original scheduled departure.

As per the Determination, the Agency's refusal was made on the basis that Air Canada had not provided evidence that it is facing the same sorts of operational imperatives and the sudden, drastic changes that characterized the initial stages of the pandemic, and it has not shown why, after more than 3 months, it is not possible to adapt operations to new realities such as health and safety precautions.

The Agency also characterized commercial decisions to consolidate flights due to load factors as an event fully within carriers' control, stating that in the current circumstances, "*it is reasonable to expect carriers to make such decisions at least 14 days before scheduled departures, giving passengers the advance notice and predictability that the APPR's timeline provides*".

Contrary to the Agency's statement, Air Canada submits that cancellations for low demand during COVID are fully outside carrier's control, and unpredictable, for the reasons that follow, and Determination No. 2020-122 should be reviewed to exempt Air Canada from the aforementioned requirements.

1. Countries', States' and Provinces' Borders are Reopening, Delaying Reopening, Adding and Changing Requirements of Entry or Reclosing with Little or No Notice

Air Canada's network relies on connecting traffic, both from other countries transiting through Canada, as well as domestic connections.

Air Canada's overall demand is thus at the full mercy of government decisions regarding borders and travel restrictions, at the provincial, state and country levels.

Decisions to reopen, delay reopening, or impose different or additional restrictions due to the ongoing COVID-19 pandemic are being made by governments around the world almost daily and with very little to no notice given to airlines. In effect, there is no predictability and no way to assess or anticipate the market or passenger demand which reacts to the conditions set by government globally.

For example, the US border closure has been extended several times with 1-7 days' notice:

- March 21 - Closed for 30 days;
- April 20 - Closed for 30 more days (1-day notice);
- May 19 - Extended to June 22 (1-day notice);
- June 16- Extended to July 21 (7 days' notice); and
- July 16 - Extended to August 21 (5 days' notice);
- August 14 - Extended to September 21 (7 days' notice).

Colombia has done the same, extending its border closure with little to no notice, causing Air Canada to cancel its flights days prior to departure.

The European Union is reviewing and updating the list of countries for which external travel restrictions should be lifted every 14 days.¹

China put in place a policy to govern services that base operations on the results of COVID-19 testing of passengers arriving on previous flights, including immediately suspending operations if certain threshold of passengers who test positive.²

Bahamas announced on August 17 that they are once again shutting down their border to international commercial flights. The announcement took effect the following day. The closure was supposed to last until August 24th but, as always, it is subject to change.

Other countries, including India and Morocco, maintain official closure of their airports to scheduled passenger services, and airlines are required to seek exceptional or flight specific approval. As a result, required approval, if obtained, is received very close to departure date, giving very little time to cancel if approval is not obtained. In addition, there are often controls or restrictions of what types of passengers are permitted to fly on services when approved, creating uncertainty and complexity.

Unlike other countries or jurisdictions, Canada has not established a plan to re-open the travel

¹ <https://www.consilium.europa.eu/en/press/press-releases/2020/07/16/council-updates-the-list-of-countries-for-which-member-states-should-gradually-lift-travel-restrictions-at-the-external-borders/>.

² http://www.caac.gov.cn/en/XWZX/202006/t20200604_202949.html

industry. Even certain provinces and territories remain closed to certain Canadians, with little to no certainty as to when or what changes will be made.

All of these changes or decisions are at or within 14 days, clearly preventing Air Canada from responding and adjusting its schedule in advance of the minimum 14 days cancellation notification requirement of APPR. Air Canada is struggling to provide services in this complex, intricate and rapidly and unpredictably changing environment. The only avenue to assure some degree of certainty would be to cease operating a route. Any attempt to operate is in an environment that calls for agility and change on a constant basis. In this environment "change is the only constant".

2. Travel Restrictions are Often Individualized

Many countries are only issuing visas on an exceptional basis. Currently, the government of Canada is not issuing passports for regular travel, and Canadians can only get passport or travel document services in Canada if they have a valid reason to travel urgently. Valid, urgent travel reasons include travel for the following reasons:

- medical reason due to serious illness
- serious illness or death of someone they have a relationship with
- financial problems from the loss of a job or business
- support an essential service
- humanitarian reasons (requires a letter from an organization that lists the humanitarian reasons.)

It is explicitly stated that the loss of airfare or other travel expenses is not a valid reason for urgent travel.³

As a result, customers who required a passport or visa for travel but who do not qualify under any of the reasons above are cancelling their travel plans, often last minute.

3. Ongoing Changes and Uncertainty in Travel Restrictions Rendering Markets Highly Volatile

Each of the dates announced for the US border reopening, and for the dates announced by the EU for the Italian border reopening to Canadians, and subsequent extensions of border closures, have had a direct impact on demand.

The highly volatile nature of travel restrictions is having a direct impact on passenger loads, with close-in changes being very high. A large number of passengers are cancelling 4-14 days prior to travel, or simply not showing up for flights, at levels previously unimaginable. On a route basis, the no-show factor is unpredictable.

Air Canada must retain the ability to make flight schedule changes rapidly in response to these unpredictable fluctuations, with no precedent or history to look to as a guide.

4. APPR is Hindering the Rebuilding of the Aviation Industry

APPR requirements that compensation be given if a 14-day advance notice is not provided and the Agency's statement in *obiter* that cancellations for low demand are within airline's control make sense in a stable environment. Unfortunately, they are disconnected from the

³ <https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/passport.html>.

reality that the Air Canada and entire aviation industry, globally, are living in the current pandemic crisis. There is no basis whatsoever to expect that stability will be achieved until travel restrictions are mostly lifted worldwide (particularly Canadian ones).

As the Agency is well aware, its role is not limited to consumer rights; its role is also to further the objectives set out in section 5 of the *Canada Transportation Act* (the "Act"), in which "[i]t is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada." (our emphasis)

As a result of the pandemic, Air Canada has indefinitely suspended service on 30 domestic regional routes and closing eight stations at regional airports. Its international networks has been similarly dismantled and impacted. Canada's quarantine requirements are still dissuading many Canadians from traveling, and there is no telling how much advance notice will be given prior to their being lifted.

As we attempt to rebuild our network, Air Canada must make flights available for purchase. However, Air Canada cannot sustain the operation of these flights if demand does not justify it, or if it initially does and subsequently evaporates within days of departure as a result of the effects of the ongoing pandemic and government decisions, which are entirely outside of Air Canada's control.

Attempting to invest in this volatile environment to provide a service and then having to pay compensation, in effect a penalty, for trying but having to cancel flights close in if it becomes apparent that their operation is unsustainable does not create conditions that assists in a recovery or that makes service available as much as feasible. This is particularly true in light of our current financial situation: Air Canada suffered an operating loss of \$1.555 billion for the second quarter of 2020, having seen a 96% drop in total passengers carried compared to the second quarter of 2019.⁴ The situation is precarious enough. Adding to it by imposing a penalty for taking a risk and investing to restore a service has an impact inimical to the interests of the transportation network as well as to the passengers who are seeking to avail themselves of the service.

The objectives of s. 5 of the Act cannot be met in an environment in which airlines are being penalized for attempting to provide a service and restore their network ultimately to serve their passengers. As such, Air Canada cannot be expected to give more than 72 hours' notice.

5. Airlines Globally are Similarly Impacted

While it is always true, it is especially so in this environment that carriers do not have any degree of certainty around other carriers' network. Carriers worldwide are in the same predicament as Air Canada and are cancelling flights close to scheduled departure. Therefore, Air Canada should not be forced to make alternative travel arrangements that include flights on *any* air carrier than its own services. Such a requirement risks disrupting passenger travel

⁴ https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/quarterly-result/2020/2020_q2_release.pdf

and leaving them stranded mid-way through their journey without any real prospect of recovery. This predicament would actually be worse for a passenger.

6. Air Canada Offers Flexible Rebooking Options

Air Canada has implemented policy changes to ensure customers retain and have access to the value of their ticket and have easy, flexible access to alternate travel arrangements once they are comfortable and able to fly again. We have implemented a world-leading travel voucher policy that allows full transferability of ticket value and that does not expire. As an alternative to this fully transferrable voucher that has no expiry, customers may choose to convert the value of their ticket to Aeroplan miles, plus 65%.

To our knowledge, no other carrier in the world offers a voucher policy this flexible. In fact, Air Canada has had to build a complex IT infrastructure to support these new policies and move all tickets over to the new flexible travel voucher product and Aeroplan options.

Air Canada has aligned its voluntary and involuntary cancellation policies and proactively communicates all available options to its customers through its website⁵ as well as through the cancellation notice that is sent out to customers when a flight is cancelled, in which our flexible policy is imbedded, as shown in the following excerpt:

Due to this cancellation, you may have the option of transferring the remaining value of your booking to an Air Canada Travel Voucher, which has no expiry date, is fully transferable and can be used multiple times. You can also convert the remaining value on your booking, minus any taxes, into Aeroplan Miles, and get an additional 65% bonus miles, or you may be eligible for a refund.

If you purchased a refundable fare, you have the additional option of returning the remaining refundable value, minus any applicable fees, back to your original form of payment.

For added flexibility, Air Canada has waived all change fees for any booking made for travel as of March 4th, added transferability for tickets (transferability is therefore not limited to travel vouchers), and extended the validity of tickets from 12 months to 24 months. While alternate travel arrangements are required to be made within a short timeframe under APPR, Air Canada has introduced a flexible rebooking policy to +/- 30 days from original departure.

Conclusion

Accordingly, Air Canada hereby requests:

- An order from the Agency that the exemptions granted by Determination No. A-2020-42 are renewed from their original date of expiry on June 30, until December 31, 2020, and in particular, an extension of the exemption from:
 - the requirements of subparagraphs 17(1)(a)(i) and 18(1)(a)(i) of the APPR that carriers offer alternative travel arrangements that include flights on other air carriers, other than those with which they have a commercial agreement; and
 - the requirements to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation within carrier's

⁵ <https://www.aircanada.com/ca/en/aco/home/book/travel-news-and-updates/2020/covid-19.html>

control less than 14 days before their original scheduled departure, so that the requirement applies only if passengers were informed less than 72 hours before their original scheduled departure. Even though cancellations in the COVID-19 environment should be considered fully outside carrier's control, such a reduction in the notification timeline will provide regulatory relief and certainty regarding compensation obligations, and align passenger expectations; and

- An expansion of the exemption from the obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the carrier does not have any commercial agreement, so that this exemption also applies to the obligation, under paragraphs 17(1)(a)(i) and 18(1)(a)(i) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the original carrier has a commercial agreement.

All of which is respectfully submitted.



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