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VIA EMAIL

February 12th, 2021

Marcia Jones
Chief Strategy Officer
Canadian Transportation Agency ("**Agency**")
15 Eddy Street
Gatineau, Quebec J8X 4B3

RE: Response to LET-C-A-72-2020 and Comments on the Inquiry Officer's Report ("Report") into Complaints on Notifications of Delays and Cancellations under the Air Passenger Protection Regulations ("APPR")

Dear Ms. Jones,

We are writing in response to Agency decision LET-C-A-72-2020 related to the aforementioned Report, for which the deadline response was revised to February 12th, 2021.¹

Air Canada is generally supportive of the conclusions of Report: it recognizes the multiple intricacies and complexities of the implementation of the APPR, in particular on multi-leg itineraries, which represent almost 40% of Air Canada's passengers journeys, as well as the good faith attempts made by air carriers to comply with these new complex and sometimes ambiguous obligations.

That said, we strenuously object to the Report's statement that airlines were not properly prepared for the implementation of APPR. Indeed, we gave repeated warnings that timeline for implementation was unrealistic because of the very complexities that are now coming to light, and in fact made numerous requests for guidance on many of these very same issues which we had anticipated; yet none was provided. It is therefore not surprising to us that these very questions are at the core of this inquiry. They were anticipated by us.

Air Canada nonetheless welcomes the Agency's comments recognising that there is no evidence that carriers intentionally misled passengers regarding the reasons for the flight disruptions. Certainly, at least as regards Air Canada, we confidently affirm this to be true. Despite the challenge, our aim was and is to be as transparent as feasible in a comprehensible way that conveys clear information about the complex, often multiple and evolving and sometimes technical factors involved.

However, intentional or not, the Agency's 23-fold increase in complaints are not mainly explained by miscommunications on the part of carriers. There are core issues with the underlying APPR requirements that have fueled consumer misunderstanding and a

¹ Decision LET-C-A-85-2020.

misalignment between customer expectations for compensation and their actual entitlement to it.

While Air Canada welcomes additional guidance from the Agency, these issues will not be entirely resolved through it. They can only be effectively resolved by removing the obligation to communicate reasons for delays and cancellations *at the time the event is unfolding*.

We therefore first provide general comments on the Report and the APPR, and then address the specific questions raised by the Inquiry Officer in his Report.

Since we understand that the Agency has elected to consider all of the complaints in bulk in the context of the Report and has not identified any specific instances of non-compliance with regards to Air Canada, we will not address any of the individual complaints, but reserve the right to do so should the Agency later raise or analyse any particular complaint.

A. COMMENTS ON THE INQUIRY OFFICER'S REPORT

1) Agency's Allegation of Inadequate Preparation by Carriers

a. Agency Knew it Was Insisting on Unreasonable Timelines for APPR Implementation

Air Canada and the industry repeatedly cautioned the Agency and the Canadian government of the short implementation timelines for APPR, and of the risk that it posed to proper implementation.

On February 20, 2019, Air Canada argued that the implementation "timeline [was] unreasonably short and impossible to meet", and that "the industry cannot meet the July 1st, 2019 deadline".²

Disregarding these warnings, the Agency pushed forward an unreasonably short timeline, publishing the final version in Gazette II on May 29, 2019, less than two months prior to planned implementation on July 15, 2019.

Following additional representations from airlines, implementation of a portion of the regulations was delayed until December 15, 2019, but not the portion that pertained to the notification of delays and cancellations. Airlines did what they could to implement the regulations in the limited time that they had. For Air Canada, this meant launching into a highly complex change of core operational processes and systems, deploying significant effort at all levels throughout the company, and pulling resources away from its business-critical reservation system replacement project, then at the end stages of its four-year plan.

APPR requires the identification of reasons for delays and cancellations both at departure (for notification purposes) and at arrival (for compensation assessment, should a customer request it). This caused a fundamental shift in delay-coding processes throughout all levels of operations and a deep rework of operational processes and of core IT systems.

² See Air Canada's *Submissions on the Gazette I Draft APPR regulations*. At the time the industry was dealing with the grounding of the B737 Max aircraft, expected the grounding to be short-lived, and was focused on customer rebooking, scheduling rework, maintaining pilot proficiency and qualifications, and ongoing safety and technical exchanges with Boeing and Transport Canada.

Also, in Air Canada's *Response to the Consultation Paper on APPR*, Air Canada stated that "given the complexity of systems and operations, any changes to policy and procedures require at least one year to implement. "Similar lead time is needed to effect IT changes when required, and at the current juncture, Air Canada has specific constraints that will restrict its ability to make changes before end 2020 at the earliest." (in reference to the implementation of our new reservation system).

b. Insufficient and Untimely Guidance Provided by the Agency

Having identified at the very early stages many of the complex issues now being assessed, Air Canada repeatedly requested detailed guidance from the Agency,³ and when commenting on draft guidelines close to implementation, highlighted the insufficiently detailed nature of the guidance provided.⁴

i. Guidance Provided Too Late to Be of Use

In the end, guidance was provided by the Agency on July 15, 2019, the very same day Phase I of the APPR came into force. Coming when it did and being so high-level, its utility was limited.

Similarly, an advance copy of guidance for Phase II was provided to carriers on November 29, only after systems were designed, a mere sixteen days of Phase II implementation, and was officially posted on the Agency's website on December 9, six days in advance of Phase II implementation. Timing, as well as the equally high-level nature of this guidance, made it of limited practical use.

On February 20, 2019, Air Canada wrote the Agency:

"Carriers cannot even begin to work on implementing changes to their processes without precise and formal requirements outlined at the end of the regulatory process and with consideration of guidelines;

The RIAS indicates that "once the regulations are in place, the CTA will issue guidance and tools for the public and air carriers to help ensure that this new regime is implemented smoothly and that the passengers know their rights".

This does not provide sufficient time after the publication of final regulations to realistically achieve a July 1st compliance date."⁵

This should demonstrate that the issues being encountered were anticipated by Air Canada and were a result of the implementation process adopted by the CTA and not the preparedness of the airlines.

ii. Guidance Content Is of Limited Use

Both sets of guidance documents essentially only reiterate the content of the regulations, without actually addressing many of the questions raised.⁶

³ For example, when providing details as to what guidance would be needed, in its *Response to the Consultation Paper on APPR*, Air Canada stated that the Agency "should carefully and clearly delineate the scope of application of the new air passenger protection regulations, the situations that may lead to compensation, as well as those that do not". The *Response* also highlighted the importance and need for detailed guidance - as oversimplified, highly publicized guidance could encourage ill-founded claims.

⁴ See, for example, Air Canada's response *Guidance Material on the Application of the Air Passenger Protection Regulations* of June 14, 2019, requesting detailed guidance on the categorization of various events, such as "scheduled maintenance", unforeseen crew unavailability, and what specifically constitutes a knock-on effect.

⁵ Air Canada's *Submissions on the Proposed Air Passenger Protection Regulations and the Regulations Amending the Transportation Information Regulations*.

⁶ See note 4 above.

On page six of the Inquiry Officer's Report, the Agency identifies as follows: "the issues that were intimately connected to the purpose of the inquiry: the categorization of flight disruptions, the definition of "scheduled maintenance" and the interpretation of a knock-on effect". These happen to be exactly the issues for which Air Canada requested guidance on June 14, 2019, and again on February 2, 2020.

Had more preparation and reflection been accommodated at the time these issues were initially identified by Air Canada and shared with the CTA, many of them could have been avoided, or at least their effects better anticipated. A different implementation process for these regulations, including substantially more detailed interpretation guidance – an exercise the Agency is now conducting more than one year post-APPR implementation- could have vastly reduced, if not eliminated, the thousands of complaints to the Agency from frustrated consumers.

Given the core structural issues with the regulations, which we discuss hereunder, the lack of adequate time for regulatory roll-out, and the insufficient and untimely guidance, the complaints were inevitable and foreseeable.

c. Conclusion and Request

Blaming carriers for "inadequate preparation" in these circumstances when the Agency itself pushed for an unreasonable implementation timeline and provided insufficient and untimely guidance is not constructive and disingenuous.

Accordingly, Air Canada respectfully requests that the statement in the Report that airlines were not sufficiently prepared for APPR be either retracted from the public Report or clarified by explaining that in light of timelines allotted and the complexity of the matters, it would have not have been reasonable to expect the airlines to have been any more prepared than they were.

Air Canada looks forward to a collaborative exchange in the future, including in the context of this inquiry, and to an approach that is more reflective of the realities and complexities of our industry.

2) Fundamental Flaws in the Regulations

a. Reasons for a Delay at Departure Often Do Not Match Reasons at Arrival

APPR's requirement to communicate reason(s) at departure creates a false expectation that this reason (or reasons) is always known and will also match the reason(s) for a delay at arrival. This is fundamentally what generates customer confusion and belief that carriers are changing their tune or lying.

The Inquiry Officer's reports unsurprisingly found that the reason provided post-event, in response to compensation requests, was often not the same as the reason or multiple reasons provided pre-departure.⁷ This is to be expected and normal, given how airline operations work: they are deeply complex, as mentioned by the Inquiry Officer in his report.

At the basis of the confusion is also that APPR compensation is itinerary-based, not flight-based. The reason provided at the gate, or even for a specific flight, even if accurate at that time, can differ greatly from the ultimate reasons for the delay at arrival of any one passenger whose itinerary is unique. Different passengers on the very same flight will experience

⁷ Inquiry Officer's Report, Highlighted Issue 3.

different unique itineraries with different controllability assessments, given disruptions on other flights in their own itineraries.⁸

b. Clear and Accurate Communication of Reasons for Disruptions in Real Time is Excessively Difficult

The Inquiry Officer concludes that passengers were often not provided with clear reasons for the disruption, or without “enough information to understand that each of the specific reasons was correct at the time that it was given and how one was linked to the others”,⁹ or that information provided by employees of the carrier did not correspond with written notifications.¹⁰

Air Canada raised these very specific issues on August 31, 2018, when arguing against the obligation to notify customers of the reasons for the disruption *pre-departure*.

In its response to the Agency’s consultation question “Should the airline be required to declare the reason for the flight disruption when the disruption occurs?”, Air Canada stated:

“No, there should be no such requirement in the regulations. (...)

[A]s further detailed below, the reasons for a delay (which can be multiple) are not always known and certainly not in real time or can be unnerving or too complex to clearly communicate.

In addition, in many cases, automated communication is the most efficient form of communication and cannot always (or efficiently) be tailored to add the specific reason. (...)

In many cases, the exact cause of the flight disruption is unclear, or there may be several overlapping causes or cascading effects. In any such case, for example in the context of a creeping delay, it can be unnerving and frustrating to customers to be constantly provided with detailed, evolving and sometimes conflicting (details below) updates of the reasons for the delay. (...)

While employees may have the best intentions, our experience with providing information on the length of delays is that multiple sources of communications (i.e. gate announcements, text notifications, airport displays) can result in confusing and inconsistent information to passengers, due to evolving circumstances, the complexity of overlapping sources of delay, and the fact that not all information is coming from the same source, at the same time. (...)

Because the benefit for consumers of such communication is more to inform of a schedule change than the reason for the change, a communication requirement prior to boarding time should not be required to include the reason for the delay.”¹¹

⁸ *Ibid.*, Highlighted Issue 10.

⁹ Inquiry Officer’s Report, Highlighted Issue 2.

¹⁰ *Ibid.*, Highlighted Issue 4.

¹¹ See *Air Canada’s Response to the Consultation Paper on APPR (2018)*.

The issues raised by Air Canada in 2018 were not unexpected. They have materialized just as predicted and are now at the root of many of the complaints the Agency is delving into through this Inquiry.

c. Unclear Timeline, Scope, and Form of Communication Obligations

Air Canada repeatedly asked the Agency for further detailed guidance on section 13 obligations under APPR, including when the obligation begins, when it should be made, how it should be made, etc., without success.¹² While these questions are not expressly covered by the scope of LET-C-A-72-2020, they remain important from a regulatory clarity and compliance perspective.

i. When Must Verbal Announcements be Made?

Many delays and cancellations are announced to passengers hours or days prior to departure. Section 13 of APPR does not make a distinction between announcements at the gate and those made three days prior. Verbal announcements in such situations are clearly impossible. Passengers might not even be at the airport or might be scattered across the airport and terminals when the delay is announced. Moreover, many boarding gates are only attributed by airports to carriers one hour prior to the actual departure – not the scheduled departure. This means that in the case of a delay/cancellation, passengers might not be at the actual gate when announcements are to be made.

Section 13 should be clarified and interpreted being triggered once passengers are at the gate.

ii. What Must Be Communicated, and How?

In his Report, the Inquiry Officer wrongly assumes that the entitlement to standards of treatment and compensation can be made through simple, blanket statements by airport agents. As explained above, given that each passenger's itinerary can differ and therefore the cause of their delay will differ, one passenger's entitlement to a standard of treatment or compensation will differ from another's, depending on the duration of their own delay.

- Example: A person can be delayed on a flight on which they have been rebooked as a result of an issue with their previous flight. They may be entitled to meals before other passengers on the same flight. Similarly, passengers arriving late from a previous connection may have arrived on time for a connecting flight specifically because it is delayed. But the length of the "delay" they experience at the airport is not the same as for other passengers.

The only way to accurately communicate entitlement to standards of treatment, compensation, and recourses, is to direct customers to a written statement explaining their rights generally under APPR that are ultimately applied to their own situation.

This approach resolves another issue: the Inquiry Officer deplored, in his Report, that a number of carriers failed to track what was communicated to customers in compliance with s. 13 APPR. Distributing written notices with set content is the best way to address this concern.

¹² As evidenced in our letters to the Agency *Supplemental Guidance on the Air Passenger Protection Regulations* (February 2020) and the *Guidance Material on the Application of the Air Passenger Protection Regulations* (June 2019)

Lastly, as an increasing number of airports are striving for a noise-free environment, audible announcements should be kept short and to a minimum and therefore refer passengers to detailed notices containing all the information listed in section 13 in generic form, in accordance with our previous submissions.¹³

d. Conclusion

To resolve the underlying issue generating the vast majority of the complaints identified in the Inquiry, the Agency must eliminate the obligation to communicate delays at departure. Making them more detailed and burdensome will only create more confusion and will not address the root cause. Canada is the only country in the world (to Air Canada's knowledge) to have such obligations, and has set an unreasonable, unattainable bar to meet.

As long as these obligations persist, the Agency should consider these communication obligations as "reasonable effort" obligations to keep consumers updated on ongoing events as a delay evolves, rather than one to provide accurate information regarding the reason for the delay to all passengers. That expectation is simply unrealistic.

An Agency awareness campaign, guidance and advice to consumers and complainants to the effect that delays do and always will evolve, as does a carrier's understanding of them, is essential.

3) APPR Creates Unreasonable Expectations

Some of the issues highlighted by the Report pertain to aspects and expectations that are not required or addressed in the regulations.

a. Detailed Explanations for an Arrival Delay Need Not and Cannot Be Provided

The Report states that when customers requested compensation, "the air carrier only referenced one reason amongst the multiple reasons communicated during the flight disruption".¹⁴ However, APPR does not require a carrier to set out an array of factors and the interplay among them or a detailed explanation of the impact or reasons. Under APPR, a sufficient response to a customer requesting compensation could be to simply state that a delay at arrival at a passenger's final destination was, overall, outside a carrier's control.

The Inquiry revealed the complex reality of airline operations using a hub-and-spoke model:

- Compensation is itinerary-based and not flight-based, so certain individuals on a flight may be entitled to compensation while others on the same flight are not, depending on their itinerary;
- The reason(s) for a delay at departure might differ from the arrival delay, particularly, but not only, in the case of a multi-leg itinerary.
- In the case of a delay affecting an inbound aircraft (knock-on), the precise reason that an aircraft is delayed might be complex and not fully understood or immediately available; and

¹³ In line with EC 261/2004.

¹⁴ Inquiry Officer's Report, Highlighted Issue 3.

- There might be various delay reasons affecting a flight which need to be investigated.

Air Canada has devised a robot to automate the analysis of root causes of arrival delays and drive compensation determinations. While this system is, necessarily, evolving,¹⁵ the process ensures consistency of output and eliminates delays and error arising from the complexity of an agent having to investigate each complaint individually and weighing the various components that contribute to an arrival delay.

Carriers cannot be required to provide a narrative of the various components of a delay. This would introduce additional significant complexity and create more, not less confusion. It would also lengthen response times, and generate back and forth exchanges with customers on the interpretation and analysis of the various components.

b. Compensation Assessments Cannot Be Provided at Departure

Having been informed of a reason for a delay pre-departure, customers understandably want to know their entitlement to compensation as well. As explained above, while they may expect airline representatives at the airport to answer that question, these agents cannot be aware of the various delay components of a passenger's unique itinerary, how they unfold and interact, what additional factors might impact delay at arrival, all of which, in the normal course, might require further investigation to assess the reasons affecting a flight, and whether compensation would ultimately be owing.

Once again, any reason provided at the gate, or even for a specific flight, may differ from the reason for a passenger's delay at arrival at final destination. Some passengers might be entitled to compensation while others on the same flight might not. The main controllability reason communicated to a passenger might thus differ from another. Given the proportion of customers holding connecting itineraries on Air Canada, this would be a normal, expected occurrence.

c. Conclusion

The obligation to provide a delay reason at departure is an underlying cause of confusion and generates misaligned expectations of compensation. Eliminating this requirement would dispel much of the confusion and resolve many of the customer complaints.

At the very least, the Agency must sensitize consumers and complainants to the complex reality of airline operations, to the fact that detailed explanations cannot be given, even at arrival, and that entitlement to compensation can only be known after arrival at final destination.

B. SPECIFIC INTERPRETATION ISSUES RAISED BY THE AGENCY

- 1) How much detail regarding the reason for a flight disruption should be provided by carriers to passengers pursuant to paragraph 13(1)(a) of the APPR, including in situations that evolve, resulting in multiple reasons for delay over time?*

¹⁵ The Inquiry Officer's report identified certain discrepancies in responses, which highlights the complexity of the analysis. See Highlighted Issue 5.

Carriers cannot provide detailed explanations in relation to a specific disruption, and especially not in real time. As previously mentioned, and as noted in the Report, delay reasons are often multiple, interlinked, and evolve over time.

- Examples: Flight can be affected by knock-on delays, delays for which the reasons are not immediately known involving external and internal stakeholders such as dispatch, ground handling, agents, baggage, customs, security, geopolitical events, etc., and one delay can affect another, without this causality being well known or understood at the time of the event.

Airline operations are far too complex to be realistically distilled and captured into accurate simplicity and are therefore too complex for detailed explanations to be provided in real time. The causes of delays must be investigated and analyzed, usually after the fact, for the airline to fully assess them, let alone communicate them consistently throughout its various communication channels.

As recommended above, APPR should be amended so that the obligation to provide a reason in real time is *eliminated*, consistent with other passenger rights regimes.

This obligation can be replaced with an obligation for carriers to communicate the root cause of the disruption after the event has been fully investigated and analysed. Typically, this does not occur until sometime after 48h from the flight's arrival.

- Eliminating the reasons given for a flight delay would drastically reduce passenger confusion and misunderstanding as to the root cause of the disruption.
 - Experience has shown that providing updated details as they become available or as reasons for a delay evolve causes passengers to believe that air carriers are "changing their tune" or even lying, as the complexities involved in assessing are, understandably, not well understood.
 - Carriers could make information available after the investigation is complete. Air Canada provides an online tool for customers to do this on their own.

So long as this s.13 communication obligation persists, the Agency should hold carriers only to a "reasonable effort" standard to communicate whatever limited information they may have, as the disruption evolves, understanding such limited information does not provide a full or accurate picture. Attempting to do any more does nothing but assure confusion and increase passenger frustration, contrary to one of the aims of the regulations.

The Agency should also have standing advice to consumers and complainants that such communication may not be entirely accurate until full investigation, does not reflect root cause and does not determine eligibility for compensation.

- 2) *If a carrier refuses to pay compensation on the basis that a flight disruption was required for safety or was outside its control, how much detail regarding the reason for the flight disruption should be included in the explanation given to the passenger pursuant to subsection 19(4) of the APPR? Should carriers have to explain multiple reasons for a delay when more than one exists?*

As explained above, providing detailed narratives of disruptions is complex and time consuming, providing little benefit to consumers.

S. 19(4) APPR does not mandate a detailed explanation – a simple assessment that a delay was uncontrollable, for example, suffices.

APPR has drastically increased the claims' handling workload of airlines. To help manage this new workload efficiently and ensure consistency when handling compensation requests, Air Canada developed various automated tools. Even with the tools, the need for additional staff (new hires) directly supporting APPR requirements has been significant.¹⁶

At the same time, claim farms are becoming increasingly present in the legal landscape, and they too use automated tools to file claims on behalf of passengers, raising the number of unsubstantiated claims that Air Canada must process.¹⁷ The Agency itself has received a high volume of claims pursuant to APPR implementation.¹⁸ These trends will worsen, should carriers be required to provide detailed explanations of disruptions.

A requirement for detailed narratives adjusted to reflect the particularities of each passenger's itinerary will inevitably create an even heavier burden on carriers by increasing the handling time for complaints. These explanations will generate additional exchanges and questions from customers, further increasing handling time. Additional complaints to the Agency will be generated through questioning of the unfolding of events and analysis of categorization.

To Air Canada's knowledge, no other consumer rights regime in the world, in any industry including aviation, imposes a regulatory requirement that consumers be provided detailed narratives of service failures at a complaint level, to every customer who complains. Such a burden would be unreasonable and disproportionate to the services offered.

3) What criteria should be applied to determine the appropriate categorization of a flight disruption with multiple reasons for delay?

When multiple delays are involved, Air Canada uses the root cause of a delay as a reason for the overall delay. When there are multiple delays with different root causes, Air Canada applies the reason for the longest series of delays (the delays sharing the same root cause), as the root cause for the overall flight delay.

4) What criteria should be applied to determine the appropriate categorization of a flight disruption caused by a crew shortage? When, if ever, would a crew shortage be considered a safety-related reason for a flight disruption, rather than a matter within the carrier's control?

This issue must be evaluated on a case-by-case basis. Proper crew planning remains within the airline's control. Crew's failure to arrive on time for their flight for reasons within their control would also be within carrier's control.

However, the delay or cancellation caused by crew going over duty time ("times out") is safety-related. That delay or cancellation could have its root cause in another event.

- Air Canada has commented on this very same subject various times over the last two years, stating that "that the Agency should make clear in its guidance that if crew

¹⁶ Air Canada has hired more than 110 new permanent employees to manage delay categorization and compensation claims, pre-pandemic.

¹⁷ Air Canada received over 400 automated demand letters from a Canadian-based claim farm in summer 2020. In-depth and time-consuming review of revealed that Air Canada's original compensation assessment had a 99% accuracy rate. The remaining 1% was due to a system error that has now been fixed.

¹⁸ The Agency itself acknowledges that since the implementation of APPR, it has received an unprecedented number of complaints: "At the close of 2019-20, a total of 13,467 complaints were carried forward for processing into 2020-21. In addition to this, since the mass disruption of air travel beginning in mid-March as a result of the COVID-19 pandemic, the CTA has received approximately another 10,000 complaints. By comparison, 826 complaints were filed in 2015, 3,367 in 2016, 5,565 in 2017, 7,650 in 2018 and 19,392 in 2019. This is a 23-fold growth in volumes over 5 years **and would be challenging for any organization.**" (our emphasis). Quarterly Financial Report for the quarter ended September 30, 2020, <https://www.otc-cta.gc.ca/eng/publication/quarterly-financial-report-quarter-ended-september-30-2020>

staffing or service obligations are impacted by uncontrollable events, then these should also exceptionally be classified as "outside our control".

- Crew shortage due to weather, or other uncontrollable situations (including labour strikes, pandemics, a crew member falling ill) should also be considered uncontrollable.

A carrier's ability to mitigate this event depends on various factors, including the presence of a crew base at the place of the particular aircraft facing a delay.

- No carrier has crew based in all locations where it operates: that would be unsustainable and given the low frequency of disruptions requiring a change in crew, unjustifiable. Even in locations with a crew base, reserve crew may not be available, such as during a weather event, on a day with multiple delays.

Classifying crew time-outs as controllable could pose a safety risk, as crews could feel pressured to operate a flight to avoid additional cost for the company.

- While carriers are not themselves putting pressure on their staff to operate past their duty day, crew also has some discretion in their decision to operate.¹⁹
- If carriers are to be penalized for making safety-related decisions, the risk of facing additional financial burden may impact safety-related decisions, an outcome which must be avoided.

5) *What criteria should be applied to determine the appropriate categorization of a flight disruption caused by a computer issue or network outage?*

Though proper forensic examination should be conducted to determine precisely what caused a service failure of IT systems, these events are typically unforeseeable and uncontrollable.

- Experience has shown that IT or network failures are almost always the result of uncontrollable and external issues (network outage, hacking, issues created by other stakeholders);
- Carriers often depend on the IT systems or networks of third parties involved in the complex interplay of actors involved in air operations, including airports' system, and have no control over the IT failures of others.

6) *How should flight disruptions be categorized when a passenger experiences flight disruptions on multiple flights on their way to their ticketed destination? Should events affecting replacement flights affect the categorization of a flight disruption? For example, should the flight disruption be categorized based on the reason for the initial flight disruption or the reason for the longest delay?*

Air Canada has had experience with both these approaches, having tried one and then the other. Feedback from customers has shown that categorization based on the reason for the initial flight disruption is more easily understood and accepted by customers.

Given the inherent complexity of such itineraries, our experience has highlighted the importance of establishing a clear and structured approach, to ensure fairness and consistency of application. Accordingly, Air Canada urges the Agency to establish clear and fair guidance on this and in this respect. We share hereunder our own illustration of the possible scenarios.

¹⁹ For example, pilots have 2 hours of discretionary time, for unforeseen operational circumstances, over and above contractual duty day for the B737MAX. Crew cannot exceed CARs timelines, however.

Air Canada defines the two main approaches as follows:

- **Causal Approach:** The assessment on multi-leg itineraries would be exclusively based on the assessment of the first delay which *causes* a misconnection. Even if there are unrelated delays on the subsequent flights, their cause would not be taken into consideration, as the passenger would not have been on that flight given the misconnection as a result of the first delay;
 - The causal approach is the method that is currently being used by Air Canada.
- **Longest Delay Approach:** The approach attributes controllability of the overall delay to the controllability of the longest delay in the itinerary, irrespective of whether a delay on one flight caused a misconnection. The reason for the longest delay would be considered the most significant contributing factor, in line with the Agency’s guidance on this term.
 - This approach was previously used by Air Canada following the implementation of APPR and led to customer dissatisfaction. It was abandoned in favor of the causal approach.

		Nature of Delay		Causal	Longest Delay
		Controllable	Uncontrollable		
1	First Leg	1h+misconnex =3.5h		6.5h controllable	6.5h controllable
	Second Leg		3h		
2	First Leg	1h+misconnex =2.5h		5.5h controllable	5.5 uncontrollable
	Second Leg		3h		
3	First Leg		1h+misconnex =3.5h	6.5h uncontrollable	6.5h uncontrollable
	Second Leg	3h			
4	First Leg		1h+misconnex =3h	6.5h uncontrollable	6.5h controllable
	Second Leg	3.5h			

7) *What should or should not be considered to be “further to scheduled maintenance” as defined in subsection 1(1) of the APPR? Should a new issue identified during the repair of another issue be considered to be found further to scheduled maintenance? Do post-flight maintenance or pre-flight maintenance checks constitute scheduled maintenance?*

Air Canada refers to its past submission on this and expressed concern that the Agency’s view the term “scheduled maintenance”, does not seem to be reflective of the safety-related safeguards put forth in the Canada Transportation Act (the “Act”), or with Transport Canada’s own definition.²⁰

If an aircraft is maintained in accordance with the maintenance programme, and a mechanical event still occurs, it is not one that can be foreseen. It should not be considered within carrier’s control. It should rather be deemed safety-related.

- Safety is a core value at Air Canada. Significant effort goes into ensuring that our aircraft are maintained with the utmost care, following best industry practices, in

²⁰ See Air Canada letters to the Agency: *Supplemental Guidance on the Air Passenger Protection Regulations* (February 2020) and the *Guidance Material on the Application of the Air Passenger Protection Regulations* (June 2019)

accordance our Transport Canada-approved programme, and on the timelines set out therein.

- Maintenance issues are usually unforeseen, detected during routine checks where no work is planned (e.g. pre-departure)

The term “scheduled maintenance” has a specific definition under the *Canadian Aviation Regulations* (CARs) and it is extremely broad. It includes any “maintenance”, including visual inspections and checks, performed at predetermined intervals pursuant to these Regulations, a maintenance schedule or an airworthiness directive. An aircraft cannot take-off without the carrier having performed the regulated “maintenance”.²¹ However, “scheduled maintenance” does not necessarily mean that any action is scheduled to be taken to maintain or repair the aircraft.

Scheduled maintenance, in the APPR sense, should be defined as being limited to situations when an aircraft is planned to be taken out of service to perform planned repairs or changes to parts of the aircraft.

- “Scheduled maintenance” in the CARs sense occurs every day on every aircraft, and could include numerous low-level checks that are essentially a walk-around, or checks of tire pressure and condition, brakes, hydraulic fluid quantities, cabin, safety equipment in cabin, slide pressure, engine oil, any obvious holes or punctures, lavatory condition, waste bin, overhead bins, cargo hold, cargo loading system, etc.
 - There is no actual repair or upkeep planned during such routine and scheduled maintenance. Any issues found during these checks are necessarily unforeseen and unplanned.
 - The only reasons for which aircraft would not depart following “scheduled maintenance” (as defined in the CARs) is if the aircraft is unsafe, and maintenance that was not planned must be made on the aircraft, to ensure that it is reliable to depart. Any issue found during these checks are necessarily unforeseen and safety-related.
- Example: Visual inspection pre-departure can reveal the premature failure of a part. This inspection is “scheduled maintenance” in accordance with the CARs, but not in accordance with the Agency’s definition. It is not a foreseeable event within the carrier’s control. Similarly, or a system check can reveal a new, unforeseen mechanical malfunction that requires a lengthy repair. This repair time could not have been accounted for and cannot be deemed within carrier’s control.

The use of the term “scheduled maintenance” in the Guidance document conflicts with the meaning under the CARs and creates confusion. The meaning under the CARs, while appropriate when dealing with strict maintenance issues, should not be used in relation to APPR for the determination of the controllability of flight delays.

The Executive Summary on APPR in Gazette II expresses the need for a broad interpretation of safety-related issues:

Many stakeholders believe that the definition of “required for safety purposes” does not provide sufficient certainty as to the type of disruptions that it would cover. The wording of this definition is meant to be broad enough to include any flight disruption that a carrier must incur in order to ensure the safe operation of the aircraft. The CTA will provide further guidance through guidance material.

²¹ Part 6 of the CARs.

Air industry stakeholders expressed concern that the definition's focus on legal requirements would exclude safety decisions made by the pilot based on Safety Management Systems (SMS). This was not the intent, and to address this concern, the CTA has clarified the definition for "required for safety purposes" to include SMS and pilot discretion. (Emphasis added)

All employees of Air Canada are subject to the SMS, including maintenance employees. In the application of the maintenance programme, during walkarounds and checks, an employee may notice an issue with a part, whether checking the part was included on their checklist or not. The requirement under the SMS is that their concern be immediately reported so that it may be assessed and addressed. This policy, often referred to as "if you see something, say something", applies to anyone who notices anything on the aircraft, including for example, ground staff loading luggage, or a caterer who accidentally hits the aircraft.

To ensure that issues are reported, principles of non-punitive reporting are included in, and form a cornerstone of, any robust SMS. In fact, section 705.152 of the CARs states:

"705.152 Components of the Safety Management System

(1) The safety management system shall include, among others, the following components:

(a) a safety management plan that includes (...)

(iv) a policy for the internal reporting of a hazard, an incident or an accident, including the conditions under which immunity from disciplinary action will be granted" (emphasis added)

It is vital to the upholding of these principles that there be no concern over financial consequences when reporting is made. Non-punitive reporting means no financial consequences. Even though passenger compensation costs associated with the reporting of an issue will not be borne by the person reporting the issue, the knowledge that such costs will be generated for the company through reporting may have a dissuasive effect. Such an outcome would be in direct contradiction with core principles of a carrier's SMS.

Attributing control to carriers in such cases has no benefit and could be detrimental to safe operations. It unjustifiably, unfairly allocates responsibility where it does not belong, and is contrary to legislative intent.

8) In situations where a flight disruption is the result of a knock-on effect from a previous flight disruption, what factors should the Agency consider when considering whether the carrier took all reasonable measures to mitigate the impact of the initial disruption as required by subsections 10(2) and 11(2) of the APPR? For example, should the Agency consider:

- *remoteness of the location;*
- *the location being outside Canada;*
- *other factors that may affect the carrier's ability to locate timely replacement aircraft; and*
- *if the original flight disruption occurred more than one flight earlier in a chain of flight disruptions.*

The reasonable nature of measures taken to mitigate the impact of the initial disruption must be assessed on a case-by-case basis, as scenarios are too varied to be predetermined by detailed guidance. It is important to avoid defining these concepts too restrictively.

Guidance should be broad enough to apply to the diverse nature of carrier operations in Canada, from the northern Canadian carrier offering flights that stops in several places, to high-density short-haul operations between Montreal and Toronto, to long-haul routes to secondary airports or isolated places.

- Example: the nature of the delay can affect the scope of a knock-on effect. Major snowstorms can affect many flights in a given location, limiting or negating a carrier's ability to use other aircraft and crew to recover from the event. Many subsequent flights can be affected, for multiple turns.
- A knock-on effect can mean different things for different airlines and on different types of aircraft: a Dash-8 may operate 10-14 segments in a day, while a Boeing 777 only operates 1-2 flights in a day. Depending on schedule and routing, a delay affecting a Boeing 777 causes a knock-on effect on fewer flights than a delay affecting a Dash-8.
- Disruptions outside a carrier's home country do, not unexpectedly, generally limit speedy recovery.

Airlines naturally optimize the use of their aircraft and crew to fly as many passengers as possible. Rapid recovery from cascading delays is not only in the customer's interest, but also the carrier's, as failure to do so causes further disruption to the carrier's network. Accordingly, the Agency should *presume* that a carrier took all reasonable measures to mitigate the impact of the initial disruption.

Conversely, the expectation that a carrier should demonstrate that it took all reasonable measures is excessive, as this requires that carriers reconstruct a past occurrence with all relevant factors in play at the time a delay unfolded. This is virtually impossible. Such a requirement would, in effect, negate the ability to raise a knock-on effect which would itself fail to account for the reality in which an airline operates.

C. CONCLUSION

Air Canada fully supports the Agency's efforts to propose clearer guidance, as we have long been a strong proponent for this. We trust you will find these submissions helpful and will consider them in the spirit of collaboration in which they are intended. As always, we remain available to discuss these issues in further detail.

Kind regards,



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cc. Scott Streiner, Chair and CEO
Tom Oommen, Inquiry Officer