



August 31st, 2018

**Canadian Transportation Agency
Analysis and Regulatory Affairs
Senior Director
Ms. Marcia Jones**

Via e-mail Consultations-aeriennes.air-consultations@otc.cta.gc.ca

Dear Ms. Jones,

Please receive a cordial greeting on behalf of the Latin American and Caribbean Air Transport Association (ALTA) and myself.

It is my pleasure to thank the Canadian Transportation Agency (“CTA”) again for giving ALTA the opportunity to share its views on the Air Passenger Protection Regulation proposal, following our teleconference of past August 3rd.

Given the fact that our conversation did not go over a concrete regulatory proposal but a set of orientations, we went over high profile views on the proposed principles of the regulation and this letter will follow the same pattern.

As a regional organization, ALTA strongly promotes harmonization of rules. The Latin American and Caribbean region represents a market that while is smaller than the US in both economic terms and passengers, geographically and politically involves more than 30 different jurisdictions. Our members suffer the continued inconsistency of local regulations with international treaties, generating additional burdens for the economic development of the region.

Therefore, when considering new regulations ALTA advocates for the adoption of harmonized regulation with current international systems of liability (Warsaw System/Montreal), ICAO principles and the IATA model regulation with which ALTA collaborated in its development.

In this sense, one of our initial concerns was the risk of extraterritoriality and potential conflict of overlapping regulations with other jurisdictions. We strongly suggest avoiding the application of any proposed Canadian regulation to flights “to” or “connecting” in Canada, which could only bring uncertainty to consumers, providers and regulators together with potential public international law conflicts for contravention to the Chicago Convention.

With respect to minimum compensation standards for flight delays, baggage delay or damage, we understand that any of these would contravene Montreal Convention, thus a breach of Canada on its application of such international instrument.

Montreal Convention is clear when providing that all awards should be based on the proven losses of the claimant, barring any possibility of punitive or non-compensatory awards. Establishing



minimum compensations for said cases, would go in the opposite direction of the international instruments and the ICAO Core Principles on Consumer Protection.

In a similar sense, we humbly suggest CTA to consider all of its international obligations that could be eroded through the proposed regulation. We have seen in the past how intended regulation in matters such as specific rates for seat assignment, baggage fees either for size or others, contravene certain Bilateral Air Services Agreements provisions on pricing freedom, raising international law challenges not desired by any of the involved parties (this is what happened with the recent amendment to the Civil Aviation Law in Mexico which raised a major pushback by numerous governments, including the US). We foresee that this same situation could happen with the proposed free seat assignment for minors and parents, carriage of musical instruments and similar provisions which would breach pricing freedom clauses of any Bilateral Agreement in which Canada might already have agreed such freedom.

For this reason, during the teleconference, ALTA strongly supported harmonization initiatives guided by ICAO's core principles: transparency, protection to passengers, market differentiation, proportionality, safety and security. It is crucial to highlight that any proposed regulation should place the incentives in an adequate manner to prevent unintended consequences. There should be no incentive that could erode the safety culture that constitutes the center of aviation.

In the same line, we encourage that CTA regulatory proposal on delays puts its consideration, its measurement considering arrival times since this is the relevant moment for consumers. In addition, we felt the lack of adequate accountability for service disruptions derived from other providers in the aviation value chain such as airports, air navigation services, among others. This creates an imbalance in the regulation which we expect CTA to address to place relevant incentives to these other incumbents for the adequate provision of their respective services.

Additionally, all regulators should bear in mind that airlines have a natural incentive to have their aircraft flying, for an aircraft on ground for non-routine maintenance means something unexpected, beyond the control of the airline. If the airline follows the maintenance manual approved by its civil aviation authority, follows the airworthiness directives and services bulletins appropriately, and there is a standard operation of the aircraft, there should be no reason for having delays or canceled flights derived from aircraft on ground, except situations beyond the reasonable control of the airline, which would include unforeseen technical malfunctions with safety-related systems i.e. engines, airframe integrity, avionics, etc..

Considering the aforesaid and its collaborative work on the IATA Model Regulation, which we encourage to introduce as a model, we recommend to introduce the following list as a non-exhaustive circumstances beyond the airline control:

- | Item | Event or circumstance |
|------|--|
| (1) | Immediate political instability, riots or acts of military intervention. |
| (2) | Terrorist activity. |
| (2a) | Removal of baggage or passengers for security reasons. |
| (2b) | Aircraft search by governmental authority. |

- (2c) Bomb discovery or scare either on board or at airport.
- (3) Strikes or other industrial action by employees of the Airline or any other third party upon which the Airline is dependent for the provision of air transport services.
- (4) Meteorological conditions incompatible with the safe operation of a Flight.
- (5) Airport or airspace closures.
- (6) Congestion or failure of airport or air traffic navigation infrastructure.
- (7) Any decision of an air traffic management body or other regulatory authority.
- (8) Damage to the aircraft structure.
- (9) A bird strike sustained during a Flight or the flight immediately preceding the Flight.
- (10) In-flight damage to an aircraft sustained during the Flight immediately preceding the subject Flight that has given rise to a claim under this Regulation.
- (11) Any technical defect or difficulty causing the aircraft to make an unscheduled diversion or return to the original airport of departure.
- (12) A technical defect which becomes apparent –
 - (a) immediately prior to the departure of a Flight; or
 - (b) in-flightprovided always that the defective component in question has been properly maintained in accordance with the manufacturer's guidance.
- (13) Passenger or crew member becomes ill, suffers from a special or unforeseen condition (including disability requiring special handling) or dies on-board at short notice before or during the flight.
- (14) Crew becomes out-of-hours as a result of a delay incurred following a circumstance beyond the airline's control, or crew is unable to perform their duties on-time due to circumstances outside their control.
- (15) Delay or cancellation of flight due to a circumstance outside the carrier's control affecting the aircraft (including gauge change) on previous flights, until such time as the aircraft is out of operation for more than 4 hours, but not if the original delay occurred more than 48 hours prior.

On the part of compensations and measures in case of denied boarding cases, we encourage to consider any solution according to the principle of proportionality and any potential non intended



consequence. Today, air fares are at a record low and continue that trend with new entrants and fierce competition between airlines. Many passengers today are benefited by airlines' policies that allow them to no-show and rebook their tickets at low prices. If overbooking penalties are high, airlines will be incentivised to apply policies that are more stringent with no-show passengers, which are significantly more than denied boarding passengers. To protect the least can end up harming the majority.

We make a call that the new regulation promotes the use of all means of technology for connecting and contacting customers. We have seen with concern the intend to use paper as a means to inform air passengers, which would be not only inefficient, costly, environmentally unfriendly, but also non-timely because in the majority of the cases, when the paper ends at the customers hand, it will probably have old information. Currently, almost all of the passengers have their own smartphones with direct connection with the airline and airline's social media, where information is generally delivered in real time. The regulation should encourage these technology means of communication to develop further. Everybody has a computer in their hands and IT is the best ally to share information.

Finally and in consideration of the proliferation in Europe of the so called claim farms, we encourage CTA to strictly monitor the application of the final rule, to prevent that it ends creating a business similar as in Europe. One of the means to prevent this from happening is that as a mandatory step before any type of filing of a claim before a court, there should be an initial direct contact from the customer with the airline customer service, encouraging self-composition of the conflict.

ALTA team is at your entire disposal to know further details and jointly work for the benefit of the industry and people served by air transport.

A handwritten signature in blue ink, appearing to read "Gonzalo Yelpo".

Gonzalo Yelpo
General Counsel