March 6, 2025

Ms. Mary Johnson
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Sent via e-mail to: Consultations-aeriennes.Air-Consultations@otc-cta.gc.ca

Re: Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Air Passenger Protection Regulations

Dear Ms. Johnson:

On behalf of our member airlines that operate services to, from, and within Canada, the International Air Transport Association (IATA)[1] appreciates the opportunity to provide comments in response to the Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Air Passenger Protection Regulations.

Summary

IATA's approach to the current consultation is guided by our Core Principles on Consumer Protection.[2] In line with these principles, any regulatory intervention should seek to achieve a balance between the protection of consumers legitimate interests and safeguarding airlines' ability to offer consumers affordable air connectivity. Moreover, the focus of any such regulatory regime and its application should be on improved network performance (in terms of reduced delays and cancellations) rather than punitive compensation. 20 years of experience from Europe has shown that instead of improving consumer outcomes, compensation-based regimes simply drive up the cost of travel and do not serve consumers' interests.[3]

Unfortunately, the experience of our members has been that the APPR have done nothing to improve the performance of Canada's air transport system. They also do not take account the specific and unique challenges of operating in Canada. On the other hand, they represent a major financial disadvantage for carriers operating in the Canadian market and generate significant administrative burden and cost. All of these factors exacerbate Canada's status as one of the highest cost jurisdictions in which to operate, with particularly damaging impacts on regional connectivity. Analysis carried out by InterVistas for the National Airlines Council of Canada (NACC) based on the Canadian Transportation Agency (CTA)'s

[1] IATA represents some 350 airlines around the world, including Air Canada, WestJet, Air Transat and Cargojet in Canada.
[2] https://www.iata.org/contentassets/2e46aace261040b9a47fb7b9da18efc9/consumer_protection_principles.pdf.
[3] See for example: European Commission: Directorate-General for Mobility and Transport and Kouris, S., *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*, Publications Office, 2020, https://data.europa.eu/doi/10.2832/529370.

2023 proposals estimated that the annual cost to airlines of complying with the Regulations would climb to $610 million per year, even under the conservative assumption that claim rates stay constant. The APPR have had no impact on delays and cancellations in part because of the lack of shared accountability and because some delays and cancellations are unavoidable. Actors in the aviation ecosystem with a key role in system performance, such as air navigation service providers, are outside the APPR framework and face no consequences in the event of service disruption. The proposed amendments will make matters worse to the extent that they erode the logical distinction between what is within and not within an airline's control and instead, for all practical purposes, require airlines to pay compensation in almost all circumstances, including those in which the safety of air passengers is potentially impacted.

Regrettably, the proposed amendments do nothing to address these and the many other problems with the APPR. Instead, the CTA appears to be of the view that continually tightening the regulations is helpful when what is required is a return to the drawing board. As experience from Europe has shown, the more complicated the regulation, the more likely there will be misunderstanding and misinterpretation on the part of the regulated party and consumers impacted by the regulation. In seeking to address some grey areas of interpretation, the CTA will only succeed in creating new grey areas.

Issues

The proposed amendments fail to address the problems with the APPR. As noted in the previous section, the solution is certainly not to make an already overly prescriptive and burdensome regulation even more prescriptive and burdensome.

IATA considers that the real issues with the APPR are:

- Transplanting a poorly designed regulation (Air Passengers Rights Regulation 2004 (European Regulation (EC) No 261/2004 (hereinafter EU261)) to Canada, without geographic limits on application, ignoring the lessons from the many challenges of EU261 and failing to account for the specific challenges of the Canadian market.

- Failing to address performance issues at root cause, in particular the lack of shared accountability which means that liability is often disconnected from control and influence.

- Designing a complex and bureaucratic framework, resulting in a huge administrative and cost burden for carriers and the CTA. This is exacerbated by inefficient processes at the CTA.

- Encouraging a compensation culture and incentivizing litigation, disrupting the airline-customer relationship, and diverting airline resources away from the operation.

None of these fundamental issues are addressed by the proposed amendments.

Objective

The objective section confirms that the CTA has lost focus on what consumers actually want, as there is nothing in the proposed amendments that will reduce delays or cancellations. Moreover, the proposed amendments would not achieve the majority of the objectives that are stated.

For example, one objective is given as being "to ensure the APPR are easier to understand, to implement and to enforce." The proposals fail to clarify or simplify the Regulations. Instead, they create new gaps and grey area that will be the basis of differences in interpretation if implemented.

Similarly, the amendments are presented as seeking to "ensure the APPR continue to balance the need to reflect operational realities of air carriers (including small carriers serving remote and northern communities) with the legislative goal of providing clear, comprehensive and consistent passenger rights." The proposals do not achieve any such balance. Instead, they would punish airlines by effectively making them the insurer of last resort and essentially turn the APPR into a tax on air travel in Canada.

In addition, the CTA states alignment with the United States (US) and the European Union (EU) as an objective in and of itself. In both cases, the CTA's approach is misguided.

- The CTA has consistently looked to model the revised APPR in whole or part on EU261 and its interpretation though case law. IATA and our member airlines have had extensive experience with EU261 since it was first implemented more than 20 years ago and are clear it is very far from representing the gold standard that the CTA presents it as.

- The legal framework in the US is very different to that in Canada and Europe. The US does not have compensation for delays and cancellations and the future of putative attempts by the previous Biden Administration to saddle the US aviation sector with such a regime must at the very least be considered as highly doubtful. It should never be forgotten that the US Airline Deregulation Act of 1978 (ADA) did more than any other government intervention to deliver benefits for consumers by enabling lower fares, greater choice, and increased connectivity. The ADA and its 1998 Canadian equivalent are the true gold standards that the CTA and the Canadian Government should look to adhere to.

A more coherent and consumer-centric focus, to form the basis of a wholesale review of the APPR framework, would be based on the following four objectives:

- Deliver improved performance of the air travel system in Canada, measured by increased punctuality and a reduction in cancellations.

- Incentivize all stakeholders in the aviation eco-system – from both public and private sectors – to focus on system performance.

- Ensure a genuine balance between protecting passengers' legitimate interests and enabling carriers to offer choice, value, and connectivity in the Canadian market.

- Create a consumer rights framework that is easy to understand and cost-efficient to implement.

Description

Clear Communications

Collection / validation of contact information at check-in

The proposed amendments would require an air carrier, upon checking in a passenger, to confirm or request each passenger's contact information and preferred electronic method of receiving communications. The CTA does not state the problem this proposal is trying to solve nor does it present evidence there is a problem with communication between airlines and passengers for bookings made directly with the airlines.

IATA does recognize a specific issue with bookings made through intermediaries where the intermediary does not pass contact information to the airlines operating the flights involved. Rather than imposing additional burdens on carriers and all passengers, IATA urges the CTA to address this issue head-on, with a requirement for intermediaries to either a) pass contact information on to the carriers or b) be liable with complying with all of the information requirements (e.g., updating passengers in case of disruption). If the CTA does not have the ability to require intermediaries to provide this contact information, the CTA should exempt carriers from the provisions of Section 11 and other requirements when intermediaries or other third parties fail to provide them with the passenger's contact information.[4]

The proposed solution of requiring information to be collected and/or validated at check-in would be time-consuming and complex, regardless of whether check-in is performed remotely or at the airport. It would also not benefit passengers in the event of a need to communicate with passengers prior to check-in for example to provide advance notice of disruption and potentially save passengers the time and inconvenience of travelling to the airport unnecessarily.

It is also unclear how this provision would work in practice for travel booked through an intermediary with flight segments operated by different carriers. The CTA should make clear that this obligation does not extend to tickets purchased under different contracts of carriage and combined into an itinerary by the intermediary. This problem would not arise if the intermediary were required to ensure that airlines have access to contact information at the time of booking.

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[4] Argentina adopted the pragmatic approach set out below (emphasis added) in its 2024 passenger rights regulation and IATA encourages Canada to do the same:

ARTICLE 7.- RIGHT TO INFORMATION AFTER THE ISSUANCE OF THE TICKET.
At the time of making the reservation and when issuing the ticket, the Passenger or Intermediary involved in the contracting must enter the Passenger's email address; if you do not have one, you must indicate the landline and/or mobile phone number, which must be operational to be contacted, directly or indirectly by the Carrier, in order to receive information about your trip. ***Failure to provide contact information or failure to consult e-mail will exempt the Carrier for the lack of information received by the Passenger.***

Communication in the event of disruption

The proposed amendments would require that the reason for any delay or cancellation be communicated without delay to passengers when there is a flight disruption, using each passenger's preferred electronic method of communication. This requirement is likely to be impractical in many cases and at worst may be unhelpful.

Airline staff may not have reliable information to share, particularly at the onset of disruption. For example, the reason for the delay or cancellation may not be known immediately. Similarly, it may be unclear what the impact or duration of the disruption will be. Sharing information that is liable to change is of no benefit to passengers. Moreover, if the preferred method of electronic communication is SMS or a similar messaging service, it may not be practically possible to convey all of the information specified in the proposal for sub-section 11.1. In the case of SMS, this would create additional costs for the airlines, especially in cases where they have to send international SMSs.

The requirement to provide information every 30 minutes is indicative of the directive, prescriptive nature of many of the proposed amendments. Requiring a carrier to provide an update irrespective of whether new information is available does not make any sense. It is also unclear who in the airline the CTA expects would be responsible for collating this information on the ground, sharing it with the airline communications center, and then transmitting it to passengers. The costs of developing such a system, training staff, and operating it in practice are not reflected in the Cost-Benefit Analysis (CBA).

Compensation

The compensation payable under the APPR for delays and cancellations are already out of line with the harm caused to passengers. As the Regulatory Analysis accompanying the original Regulations noted, the average value of one hour of air travel was estimated at $18.49 yet compensation for a 3-hour delay was set at $400, rather than $55 as would be indicated by valuing the cost of lost time.

The proposed amendment in section 16.1 would further require carriers to provide compensation for "inconvenience" to all passengers, including in situations where passengers denied boarding are rerouted such that they are not even delayed at arrival at their destination. The CTA again provides no evidence that the level of compensation is in any way related to the harm caused by such inconvenience.

Most passengers' primary goal when disruption occurs is to get to their destination as expeditiously as possible. The proposal would penalize airlines even when they manage to get the passenger to their destination in time without any delay compared with their original itinerary. The CTA's thinking is grossly misguided as it should be encouraging and rewarding airlines when they are able to put such alternative arrangements in place.

The proposals would also permit third parties to act on a passenger's behalf and allow claims for compensation to be made to any air carrier involved in the passenger's itinerary. Both elements of this proposal are problematic.

- Claims management companies (CMCs, sometimes called claim farms) have been a very unwelcome side-effect of the many flaws with EU261 as they merely extract money from the

system through the exorbitant commission they charge. The proposals would further open the door to CMCs developing in the Canadian market by allowing people other than passengers to file claims on behalf of the passenger. IATA requests that the CTA clarifies the wording to specify that the intent is to allow persons such as family members to act on behalf of the passenger and not commercial entities.

To the extent that any third-party representation is envisaged then the entities providing such representation should be tightly regulated and subject to the same legal and financial checks and safeguards that would apply to a law firm or any other entity providing representation and collecting monies on behalf of passengers.

- Allowing passengers to make a claim with any carrier on an itinerary affected by disruption is impractical and would be difficult to implement since carriers do not have control, oversight, or information on another carrier's operations. APPR's broad and extraterritorial scope would require airlines to put systems in place to transmit claims between carriers – including non-partner airlines – and to avoid duplicative claims. There are privacy rules that would prohibit such systems from working effectively and double claims would be promoted. Moreover, the costs of putting these processes and/or systems in place are not reflected in the CBA. Claims should be submitted to the operating carrier of the affected flight. The proposed amendments would require carriers to provide claimants with a large volume of documentary information in the even of claims being denied, including applicable fare rules and tariff. The CTA does not provide evidence that the information specified would be beneficial to the claimant while it is very clear it would add to the administrative burden facing carriers, which has not been accounted for in the CBA.

Exceptional Circumstances

The CTA is proposing a two-part test for when an event can be considered exceptional and therefore not subject to airline compensation:

- The flight disruption was directly caused by a situation on a limited list of exceptional scenarios, or
- The disruption was due to such an exceptional scenario affecting an earlier flight, and
- The event could not have been avoided even if the airline took all reasonable measures to do so.

The proposals then set out a limited and exhaustive list of circumstances that would be considered exceptional. The concept of a list is helpful and should help avoid the worst experiences of the EU over the past 20 years where it has been left to judges rather than aviation experts to determine what is and is not an extraordinary circumstance.

IATA notes that the CTA's proposed list has evolved since its 2023 consultation and explicitly includes hidden manufacturing defects and unforeseeable technical defects. The explicit recognition of the primacy of safety in the original APPR was a key and welcome distinction between the APPR and EU261 and it is of paramount importance that it is preserved.

IATA does not support the proposal for the list to be considered as exhaustive. Experience has shown it is impossible to anticipate and predict every potential eventuality or scenario. Therefore, any list should be binding but non-exhaustive and the list should be subject to periodic review.

In the same spirit and to support the emphasis on ensuring safe operations, IATA calls on the CTA to include the following two scenarios in the list:

- Decisions an airline makes based on its Safety Management System or that of one of its suppliers;

- Safety related decisions pilots and maintenance personnel make at their discretion.

It is critical to avoid any potential for the requirements set out in the APPR to have a negative impact on the safety culture of an airline operating to, from, or within Canada.

The second part of the proposed test of exceptional circumstances is that airlines be required to prove that they took all "reasonable measures" to avoid the event that caused the delay or cancellation. Anticipating a repeat of European experience, airlines and the CTA will be inundated with challenges as to whether the measures taken in a given incident were "reasonable" under the circumstances. The effort required to demonstrate the measures that were taken is frequently overwhelming and creates a massive administrative burden for carriers and the CTA alike to an extent that is not reflected in the CBA. It can also be challenging or even impossible to demonstrate the efforts that were made to avoid disruption when complaints are submitted weeks or months after a disruption event.

IATA urges the CTA to remove the "reasonable measures" test. As an alternative, the CTA could eliminate the term "all reasonable" and replace with "applicable contingency measures." Or the CTA could define the term more tightly as "measures from a carrier's contingency plan that could be applied to the situation." This would avoid placing additional burdens on carriers who are already fully incentivized to avoid disruption which generates a major financial cost to them even before compensation requirements are taken into account. This is an example where the CTA has an opportunity to create a genuine balance between passengers' interests and airlines' operational realities.

More broadly this example highlights the fundamental problem with the CTA's approach to amending the APPR – namely that tweaking the wording to address problems of interpretation in one area just creates new gaps and grey areas that will in turn need to be clarified and amended. The approach suggested in IATA's comments links the text in the Regulations back to commitments that carriers have already made and should therefore mitigate concerns over interpretation.

Assistance

The proposed amendments would require carriers to provide care and assistance during disruption that is due to either exceptional circumstances or outside carriers' control. This proposal essentially equates to a mandatory insurance for passengers, that will likely be paid for through higher ticket prices. The CTA presents no evidence that passengers are willing to pay extra for this level of protection, nor is any opt-in alternative such as purchasing voluntary travel insurance presented. Airlines should not be used as the insurer of last resort.

When there are exceptional circumstances (such as weather events or airspace or airport closures), the resulting disruption is often "systemic" in that it affects multiple flights and multiple carriers. It may not be practicably feasible to provide the levels of assistance specified in the Regulations. Moreover, even if hotel rooms are available, hotel rates can greatly exceed the rates used in the CBA. While the concept of a cap or limitation on the assistance obligations is welcome, it is unclear how the 72-hour cut-off interfaces with the rebooking requirements set out elsewhere in the proposed amendments. IATA interprets that the 72-hour provision relates to an extended and systemic disruption affecting a significant proportion of the aviation network. If this interpretation is correct, then it would be helpful for the CTA to clarify its intentions. Such grey areas are the source of so many of the headaches that the APPR have created.

The CTA proposes requiring that any overnight accommodation must reflect the needs of a passenger with a disability. Airlines cannot guarantee this accommodation. Hotels have limited accessible rooms and assignment of those rooms is the responsibility of the hotel and occurs at check-in, which airlines are not a party to and have no influence over.

Rebooking

The proposed amendments would require that if an airline cannot provide a confirmed rebooking on their own or a partner's flight departing within nine hours of the original scheduled departure, the carrier would be required to offer a rebooking on the next available flight with any carrier leaving from the same airport.

In the unfortunate cases when disruption occurs, airlines will seek to rebook passengers as soon and as conveniently as possible. Many airlines have systems that give passengers a significant degree of choice and control over their rebooking arrangements, for example through airline apps or their website. However, for obvious reasons, an airline's booking system will only be set up to offer alternatives on that airline or its partners. Rebooking on an airline's own services or those of its partners will also usually be the most consumer-friendly option and give passengers peace of mind in the event of any further disruption as the rerouted travel will be under the same conditions of carriage as the original booking.

Rebooking on a different carrier (or even multiple different carriers) with which the original airline does not have existing relationships does not have any of the benefits stated above. The proposals set out under sub-section 13.2 would imply very significant costs for airlines operating to and from Canada, especially for smaller airlines or carriers without commercial partnership agreements with other airlines serving the Canadian market. Rebooking with third-party carriers would necessarily need to be a manual process, adding time and complexity as well as further administrative costs. Finally, rebooking on a third-party carrier would mean that the original airline is unable to offer the passenger protection or to assist in the event of further disruption.

In the event of mass or systemic disruption, rebooking within the timescales set out in the proposed amendments is likely to be impossible – even on alternative carriers – as all airlines will be reaccommodating passengers as the system recovers. The proposed amendments do not take account of the challenges of recovering from systemwide disruption such as severe weather or ATC outages.

A further problem relates to the administrative challenge generated by the burden of proof requirements airlines face during complaint proceedings. Often complaints can be made many months after the disruption event at which point the airline involved will not be able to demonstrate that a given itinerary was the first available. Booking systems are dynamic, are updated in real-time, and cannot easily be consulted after an event. Even if schedule data shows that alternative itineraries were theoretically possible the airline may not be able to demonstrate whether space was or was not available for those itineraries. An approach that has been adopted by some enforcement bodies in Europe with some success is for the authority to validate an airline's system for responding to disruption in order to ensure it is compliant with the regulations rather than investigating each complaint on a case-by-case basis or expecting that an airline is able to reconstruct past availability. IATA encourages the CTA to investigate adopting this approach which could save significant time and resource for both airlines and the CTA in terms of claim and complaint handling.

Refunds

The proposed amendments would enable passengers to choose a refund, even prior to being provided with a rebooking, in a series of defined scenarios. The proposals would also require refunds to be provided within 15 days from when the passenger becomes entitled to a refund. The trigger for a refund being payable and the starting point for the timescales set out in the proposals should always be a refund request being made, not the delay or cancellation. Any timescales imposed on airlines with regards to refunds should relate to the processing of the refund. Airlines have no control or influence over banks or credit card companies.

This is particularly relevant where a refund becomes a choice that a passenger can make while a disruption incident is ongoing. It would not make sense for airline staff to be processing refunds mid-disruption when their focus should be on a) attempting to resolve the disruption itself and b) providing assistance, as required elsewhere in the regulation. Refunds would be best dealt with away from the airport environment.

Similarly for bookings made through intermediaries, if a travel agent is the primary contact point for the passenger and the passenger communicates to the agent that they would prefer a refund rather than a rebooking, the agent will have to notify the airline. The airline should only be made accountable for refunding within a set, reasonable timeframe once it becomes aware that a request for a refund has been made and has received the full information to enable the refund to be processed.

A related point concerns the payment flow for bookings made through intermediaries. If the airline collected payment through a travel agent, the airline would refund the agent, but it does not have visibility on how long it will take for the agent to pass that refund to the purchaser. Moreover, airlines can only refund to a purchaser the funds that the carrier collected. Airlines should never be held liable for service charges or other fees collected by the travel agent but not remitted to the airline.

IATA does welcome two principles that are set out in the proposals, namely that:

- A refund must be paid to the payer, the person who paid for the service (whereas compensation is payable to the passenger), and

- A refund must be paid on the same payment instrument that paid for the original purchase (which is the sole way to ensure that the refund goes back to the original payer and to guard against fraud).

Family Seating

The proposed amendments would require carriers to communicate to passengers if they are unable to ensure family seating at the time of booking to make sure the person making the reservation is fully aware of the operating air carrier's obligations to attempt seat assignment as well as the fact that it might not be possible.

IATA and its member airlines are committed to supporting the needs of passengers. We recognize the importance of parents and guardians having the ability to supervise and support their children during flight. Even prior to the implementation of the original APPR, most IATA member airlines already worked to ensure that families travelling on the same booking are seated together as a matter of course unless there are compelling practical or safety reasons why it is not possible.

The CTA has not provided evidence to demonstrate why the additional communication requirements are necessary and IATA is not aware of major problems with the provisions set out in the original APPR. Adapting booking systems, websites, and apps to comply with the notices required under Section 22.2 will require significant and time-consuming programming work. The cost of these adaptations is not reflected in the CBA.

IATA welcomes the fact that the APPR provides airlines some flexibility on how to accommodate the needs of their passengers to the greatest extent practicable and recognizes there may be very limited circumstances in which this cannot be provided.

Bumping/Denied Boarding

The proposed amendments would require the air carrier to inform a passenger who volunteers to give up their seat of the compensation due in case of involuntary denied boarding, and to confirm this entitlement in writing prior to the departure of the aircraft.

The proposed amendment would undermine a process that works incredibly well right now, such that involuntary denied boarding (or "bumping" to use the language of the Regulatory Analysis Impact Statement) is very uncommon. The act of seeking volunteers allows passengers who have flexibility in their schedule to identify themselves to the airline and for an airline and passenger to reach a mutually beneficial arrangement.

If a carrier has to essentially pay the APPR-stipulated amounts in any event, then there is less incentive to go through the process of seeking volunteers in the first place – which is time-consuming. An airline would be more likely to select passengers at random for involuntary denied boarding. Passengers with more travel flexibility who would have preferred alternative compensation (such as vouchers, miles, upgrades, or lounge access) have no guarantee of being selected and passengers who are selected may have more immediate travel demands and could be subjected to greater inconvenience.

Moreover, denied boarding situations are already disruptive enough for airline operations and the priority of gate agents should be to focus on the safe and timely departure of the flight. Providing written confirmation of entitlements prior to departure of the flight as opposed to after flight departure provides no tangible benefit to affected passengers and jeopardizes the timely departure of the flight.

IATA urges the CTA to maintain the *status quo* and to retain the fixed entitlements and compensation provided for under the APPR as a backstop for cases of involuntary denied boarding. As noted in the section on compensation, IATA also urges the CTA to remove the proposed requirement for airlines to provide compensation if there is no delay at arrival.

Regulatory Analysis

The CBA supporting the proposed amendments is not fit-for-purpose and should not be relied on due to a number of important failings and omissions, any or all of which could impact the estimated Net Present Value (NPV) materially enough to flip the NPV from positive to negative.

The CTA has calculated a NPV of $14.9 million over a 10-year period (or $2.2 million on an annualized basis). Set against the CTA's estimate of costs of $512.4 million, the CTA claims that benefits exceed costs by 2.9 percent. This can alternatively be expressed as a Benefit-Cost Ratio of 1.03.

Whichever way it is presented or examined, the numerical analysis is extremely marginal. This is not surprising as the APPR is in essence a wealth transfer from airlines to passengers, albeit with very significant administrative costs attached. An alternative interpretation, given that a large share of the costs of the APPR will likely be recovered via higher ticket prices, is that the scheme is a wealth transfer from the vast majority of passengers whose travel is not disrupted to those few passengers who experience long delays or cancellations despite carriers' best efforts.

To illustrate how fragile the economic case is, costs would only need to be 3 percent higher than estimated or benefits 3 percent lower (or a combination of the two) for the NPV to become negative. Given the extremely marginal nature of the CBA and the NPV estimate, it is very surprising that the CTA has not carried out any sensitivity analysis to test the robustness of the NPV to variations in key input assumptions. IATA urges the Treasury Board to scrutinize the analysis carefully and instruct the CTA to carry out such sensitivity analysis.

As an example of the degree of uncertainty involved with input assumptions for *ex ante* impact analysis, in its 2018 CBA for the original APPR, the CTA estimated that its cost for implementing the scheme would be $1.4 million on an annualized basis. By the time of its 2024 consultation on the complaint handling fee, this same figure had risen to $29.8 million based on actual experience. In the current analysis, a variation of just $2.2 million in annual costs or benefits would put the CTA's estimate in negative territory.

Of the elements that are quantified within the CTA's CBA, IATA focuses on three key assumptions which each of which could have a significant impact on the NPV calculation:

- <u>Cost estimates:</u> The assumed costs for assistance elements are not representative. The figure given for accommodation for example is a nationwide figure. It does not correspond to the fact

that costs will be significantly higher in the principal hubs which account for the majority of air travel flows. It also does not account for the fact that hotel rates for short notice bookings are often much higher than average or for the scarcity of available rooms in the event of significant disruption – carriers are not able to secure hotel rooms in advance as it is in the nature of disruption events, they are unpredictable. Moreover, comparing the CBAs from 2018 and 2024, the CTA does not appear to have adequately accounted for the significant inflation that Canada has experienced over the period.

- Assumed corporate discount: The CTA does not justify the application of a 15 percent corporate discount to assistance costs . IATA notes that without this corporate discount being applied, the cost to airlines of providing assistance (even at the very conservative rates used in the analysis) would increase by $3.15 million per year. This would be sufficient to turn the NPV calculations negative.

- Comfort premium: The CTA also does not justify the comfort premiums assumed in the analysis or why these assumed values are applied to all passengers equally. If the premiums were to be removed, the annualized benefits to passengers of food and drink would fall from $29.1 million to $21.7 million and the annualized benefits of accommodation assistance would fall from $2.7 million to $1.6 million. This would equate to a total decrease in annualized passenger benefits of $8.5 million per annum. This is almost four times greater than the CTA's estimate of annualized Net Present Benefit.

  IATA does not question that some passengers place a premium on comfort or protection in the event of disruption. However, we do note that it does not apply equally to all passengers and many cost-sensitive passengers prioritize a lower overall fare. Moreover, those passengers who do value comfort, have the possibility to buy voluntary travel insurance.

In addition, several significant and costly aspects of the proposed amendments are not properly accounted for in the impact analysis or are omitted completely:

- IATA does not agree with the CTA's assumption that rebooking is cost-neutral and urges the CTA to update its analysis. The rebooking requirements in the proposed amendments would constitute a very significant cost for airlines, especially for those carriers with limited partnership agreements. The cost neutrality assumption presumes that rebooking for international segments involves rebooking onto another Canadian carrier. This is hard to justify, at least for routes which are only served by a single Canadian carrier.

- The CTA has not accounted for the onerous costs to airlines of IT development as well as updating processes and systems to comply to the proposed information requirements, including:

  - The obligation to provide extensive documentary evidence if and when compensation is refused.

  - Centralized collection, validation, and transmission of disruption-related information to passengers in real-time, including the potential requirement for updates every 30 minutes.

    - Collection/validation of contact information at check-in. Plus, transfer of contact information to other carriers involved in the itinerary.

- The CBA does not take account of the "Complaint Handling Fee" that the CTA consulted on in 2024 and for which it proposed requiring airlines to pay a $790 levy for every claim processed by the CTA, regardless of whether the CTA finds in the airlines' favor or not. We recognize this a separate CTA file that is still under consideration. However, it appears likely the amendments as currently proposed will increase the number of passenger complaints, many of which will result in this $790 levy. This fee would further increase the administrative costs associated with the APPR and should be included in the CBA.

Lastly and related to the previous bullet point, the CBA only reflects costs to Canadian airlines and Canadian passengers. The CTA acknowledges that its analysis does not reflect the costs that the 140 foreign carriers that CTA cites in its proposal who would be expected to provide compensation, refunds, or assistance to passengers flying to and from Canada, nor the cost associated with foreign passengers flying with Canadian carriers. IATA does not agree with CTA that its approach is consistent with Treasury Board guidance. Moreover, omitting this significant portion of the air travel market significantly underestimates the true cost of the proposed amendments.

Enforcement

The CTA proposes increasing the administrative monetary penalties by 10, up to a maximum of $250,000. The CTA provides no justification or evidence that the existing sanctions are not sufficient, nor does it include any estimate of the number or cost of sanctions in the Regulatory Analysis. IATA urges the CTA to withdraw the proposed changes.

Conclusion

It is clear from the existing APPR, the experience of EU261 and the proposed amendments being considered here that it is extremely difficult to craft a regulatory solution to address the inconvenience to passengers resulting from the delays and cancellations that have always been a part, albeit infrequent, of commercial aviation. In retrospect, it was a mistake by the Canadian Government, and the European Union before it, to seek to address delays and cancellations by punishing airlines who are already doing their very best to avoid the added cost and passenger dissatisfaction that comes with these irregular operations. Rather than retreating from this approach when delays and cancellations were not reduced by the APPR, the CTA is attempting through these proposed amendments to fix the unfixable. This intervention into this deregulated market will result in higher costs to airlines and likely higher fares, less choice, and more confusion for passengers. It will also make an already challenged Canadian commercial aviation market even less attractive to foreign carriers. We urge the CTA to learn the lessons of the past and reduce, rather than increase, their regulatory overreach in this area.

Thank you for your consideration of our comments.

Sincerely,

Douglas E. Lavin
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