Regulatory Modernization Initiative: Air Transportation (Phase 2)

Air Canada Submissions

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To: Canadian Transportation Agency

From: Air Canada Legal Department (with consolidated input from International and Regulatory Affairs and Insurance Departments)

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I. CONTEXT

On May 26, 2016, the Canadian Transportation Agency (the "Agency") formally launched an initiative to review and modernise the full body of regulations under its administration: the Regulatory Modernization Initiative ("RMI"). Many of these regulations date back 20 or 25 years and need updating to reflect changes in technology and equipment, user expectations, business models, and best practices in the regulatory field. The Agency launched its consultation on air transportation on December 19, 2016 and released a Discussion Paper with the intent of modernizing aspects of the Air Transportation Regulations ("ATRs") in relation to, among other things, code-sharing, wet-leasing, charter services, airline control-in-fact reviews, and insurance provisions. On September 1, 2017, the Agency released three supplementary Discussion Papers on i) Code-Sharing and Wet-Leasing, ii) Charter Activities and Advance Payment Protection and iii) Air Liability Insurance Provisions.

1. Air Canada's Support

As already expressed in relation to Phase 1 of the RMI consultation regarding accessible transportation, Air Canada welcomes the opportunity to provide comments on this RMI. We are now pleased to provide input into the various matters presented in the Discussion Papers released in relation to Phase 2.

Air Canada supports the Agency's effort to provide the clarity, predictability and uniformity found in more modern, comprehensive regulatory schemes and its attempt to simplify the regulatory approval process. Various provisions of the ATRs were introduced more than 20 years ago, and a revamp is certainly welcomed to ensure that the regulatory framework continues to be in line with industry realities and practices.

2. Air Canada's Input

In the course of the RMI and its Phase 2 consultation regarding air transportation, the Agency circulated various draft Discussion Papers and invited stakeholders' feedback. As such, on April 6th, 2017, Air Canada provided comments and feedback verbally during consultations attended by certain of Air Canada's legal advisors and various subject-matter experts. Revised Discussions Papers were subsequently released in early September 2017 showing certain specific proposed approaches to key topics, though we have not yet seen specific draft regulations to amend the ATRs.

Air Canada is now providing written submissions on the various Discussions Papers and will be pleased to meet with the Agency to elaborate more fully. We also look forward to commenting on specific draft regulations once available for consultation.

II. EXECUTIVE SUMMARY

1. Charter Services

First, Air Canada recommends regulatory changes to better protect the bilateral agreement framework and avoid confusion with scheduled services for the traveling public by essentially limiting the duration of charter operations.

Second, we recommend simplifying the regulatory framework by eliminating the categorization of charters altogether and by eliminating tariff filing requirements.

2. Code Sharing

There should no longer be a requirement for marketing carriers who do not operate to Canada to hold a Canadian Aviation Document or FAOC from Transport Canada.

Similarly, regulatory requirements for code share approval should be streamlined and narrowed to a simple notification for code shares operating under open skies-type agreements and a simplified approval process for other types, for the sole purpose of verifying the availability of bilateral rights.

Such an approval process would not require anywhere close to the current 45 days stated in the regulations.

3. Wet-Leasing

Air Canada recommends a simplification of the approval process, a shorter timeline for this approval process, and a regulatory change to reflect the government's current wet-lease policy, but apart from the specific conditions under which this policy applies, we do not believe that there is a need to distinguish code sharing from wet-leasing in the regulations; otherwise confusion and complications may arise.

4. Applicable Conditions of Carriage to Flights Operated by Another Carrier

Generally, for all agreements where the carrier selling air services is different from the carrier operating, it would be helpful for the Agency to recognize the uniform reality that, in certain circumstances, the operating carrier's, conditions of carriage apply. This would help manage consumers' expectations and obtain accurate information as to which conditions of carriage actually do, in reality, govern.

5. Insurance

Air Canada has few recommendations regarding air insurance but provides comments on the Agency's questions. In particular, we believe that calculating minimum insurance based on passenger numbers rather than seats would create a significant administrative burden for the industry.

6. New Business Models and Industry Tools

Regarding evolving air service business models, we recommend a simplification of the ASPAR requirements to reflect advertising principles rather than a detailed, prescriptive approach in order to keep up with evolving marketing practices.

7. Indirect Service Providers

It is important that the playing field be levelled so that the same rules apply to all airlines or entities that look and feel like airlines, such as "travel agents" who only sell air services and are the only interface with the passengers.

8. Excluded Services

Air Canada has no comments regarding excluded services.

9. Canadian Ownership and Control

Bill C-49 will need to be taken into consideration as the Discussion Paper and specific questions were issued in December 2016. The regulatory changes should serve as an impetus to ensure that the control-in-fact requirements are robust and applied in a predictable and realistic manner. Air Canada stresses the need to ensure that the concept of affiliation and direct/holdings is taken into consideration and that a global comprehensive approach continue to be taken.

10. Monitoring, Compliance and Enforcement

Air Canada recommends a more cooperative approach to compliance and enforcement of ATR provisions such as ASPAR that would help further the objectives of ATR provisions such as ASPAR rather than penalize for minor oversights and omissions.

11. Other Considerations

11.1 Reduction or Discontinuance of Domestic Services: Air Canada recommends that the requirements regarding the reduction or discontinuance of domestic services, which are archaic and no longer serve any purpose, be eliminated.

11.2 Tariffs: Air Canada recommends that the requirements regarding tariff provisions be simplified as the Agency's approach to regulating tariffs has led to the creation of documents that are complex, dense, opaque and anything but user-friendly. As a result, they are virtually unused by consumers and unfairly leave an impression that carriers prefer not to be transparent when this is not the case. The requirement undermines the policy-objectives of transparency and usability and make the tariffs inaccessible. Indeed, in this digital age, requiring them to be available at a physical location is a burdensome requirement that achieves little. Accessibility depends on simplification and not physical location.

III. AIR CANADA'S DETAILED SUBMISSIONS

A. Charters and Advance Payment Protection

1. Background and General Comments

i. Charters are Not Long-Term Scheduled Services

One issue with the current regulations is that they do not adequately distinguish between scheduled and charter services.

Scheduled services are typically flights that are offered to the public, subject to a timetable, and operated for a long period of time. They are subject to specific rules found in international agreements and national law around the world which protect the national sovereignty principle "every State has complete and exclusive sovereignty over the airspace above its territory". [1] The Chicago Convention further recognizes this principle in its article 6, which states that "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State".

The Chicago Convention also provides for a right to operate non-scheduled flights engaged in the carriage of passengers[2], also known as charter flights, and subjects them to further conditions from the state of embarkation and/or disembarkation. There is a distinction made at an international level between scheduled services and charters, but the defined terms have

[1] 1944 Convention on International Civil Aviation ("Chicago Convention"), article 1.
[2] Article 5, Chicago Convention

evolved otherwise. In Canada, the line between scheduled and non-scheduled services seem to have become blurred, exacerbated by the change in the distribution and selling of air services in recent years with the advent of new technologies. This confusion has led to the operation of services that can circumvent government-negotiated air traffic rights and transgress restrictions that have been incorporated into bilateral agreements.

This has led to the prevalence of charters being regularly operated as hidden scheduled services. For example, a tour operator that purchases the entire capacity of an aircraft and resells the seating to the public for a service that is operated year-round for many years is a charter in name only. In reality, it is a scheduled service. The Agency has a legal obligation to protect the framework of bilateral agreements and apply appropriate rules to each scenario. The way in which to do so, however, should not involve a rigid categorization of charter services or burdensome obligations.

We support the Agency's approach to review the charter framework and provide certain recommendations below.

ii. Foregoing Tariff Filing Obligations

Another issue with the current regulations is that the obligation to have charter tariffs, with fares and transport conditions that must be filed, no longer serves any purpose in light of the indefinite exception order granted a long time ago by the Agency. The elimination of these requirements is essential. Obviously, in cases where charters are operated and sold like scheduled services, passengers are entitled to know their rights; in such cases charters should be subject to the same obligations to disclose terms and conditions of carriage as those applicable to scheduled services. However, it makes little sense for such an obligation to apply to true charters which are typically operated only in limited circumstances and for specific purposes for capacity not made available to the public and for which terms and conditions are negotiated with the charterer and contractually agreed between the parties.

Recommendation

- A modernized and simplified approach to the regulatory framework for charters would involve less burdensome obligations, distinguish more clearly between charters and scheduled services and add length of time restrictions to the operation of charter services to effectively limit the operation of scheduled services disguised as charter services.
- Air Canada recommends the elimination of the obligation to file fares and terms and conditions of carriage for true charters.

2. Responses to Agency Proposals - Discussion Paper September 1, 2017

i. General Policy Framework

- *Should the existing eight categories of Canadian originating charter types be replaced by either:*

  Option A: Three categories of charters (PRCs, PNCs and GCs); or,

  Option B: Two categories of charters (PCs and GCs)

- *Are there other scenarios that should be explored for categorizing Canadian originating charter types?*

Air Canada Response: It is unclear to Air Canada why there should even be distinctions between various charter types. The evolution in the aviation industry that has rendered eight charter types out-of-date continues. Business models will continue to evolve, and there is no reason to think that categories, even if simplified, will not become out-of-date before the new regulations can evolve again. Moreover, the benefit of having such categories is unclear.

Future regulations should be flexible enough to promote and accommodate the evolution in the industry and, in so doing, better meet the changing needs of consumers. A regulatory structure that imposes onerous administration and operational obligations so that a business model "fits" into preset regulatory categories risks hindering economic growth and stifling new business opportunities.

Indeed, Air Canada agrees with the Agency that the current regulations are overly detailed and prescriptive and impose needlessly onerous notification and approval requirements, as well as unnecessary filing obligations. Air Canada strongly endorses the comments in the discussion paper about how the liberalization of the industry requires a reduction of the administrative burden and the elimination of certain provisions. However, it is unclear why there remains a need to keep rigid categories. A modern updating of the regulations requires a more holistic approach and a rethinking of the regulatory framework, rather than a piecemeal approach, parsing certain archaic parts out and retaining a fundamental outdated structure.

Air Canada therefore recommends the elimination of the charter categorizations altogether.

Recommendation

Though Air Canada believes that true charter services offer the public a flexible and useful temporary service on behalf of a third party, the Agency should

adopt to permit regulations charters only charters that are truly, a short-term solution with limited application. As charter services are excluded from Bilateral Air Services Agreements (BASA) and operate on non-existing traffic rights, the long-term use of these services leads to an unacceptable circumvention of the restrictions found in BASA. Indeed, because these services can be approved without a bilateral right, they are too often used to operate scheduled services disguised and approved as charters.

Charter services should only be operated on a short-term basis, and derogating from negotiated bilateral rights should only be permitted on an exceptional and extra-bilateral basis. A regulation that imposes a time limit on charter services would continue to allow for the advantages that these services offer to the public as genuine charters already are limited in time. Time limits on charter approvals would allow for the negotiation of legitimate traffic rights should the services continue. Alternatively, the Agency and the other concerned foreign governmental authority could agree to provide extra-bilateral authority for such scheduled services.

By restricting the duration of charter services, the Agency's new regulatory framework would effectively eliminate long-term disguised scheduled services, all the while promoting a uniform way of conforming to legitimate air traffic rights. Time limits on charter services have been imposed in other jurisdictions as well, including Europe and South America.

ii. Specific Questions asked by the Agency

a. Canadian Originating Charters

- *Should the following regulatory requirements be maintained, modified, or revised as they relate to Canadian originating charters:*
  - *the prohibition against the carrier selling directly to the public*
  - *the requirement that 100% of the aircraft capacity be chartered, and;*
  - *the requirement that the air carrier holds the appropriate non-scheduled international licence that authorizes services on a charter basis between Canada and the foreign country to which the flight is destined or from which it originates*

Air Canada Response:

These requirements should be eliminated and replaced with the above proposal except the obligation to have a certain licensing authority in place, which should be maintained. This would allow the Agency to retain a needed oversight over who is selling or holding out services to the public in Canada.

- *Should additional regulatory provisions for Canadian originating charters be retained or eliminated?*

Air Canada Response: While Air Canada is recommending the elimination of categories of charters, we agree that the air carrier (or the entity holding out an air service to the public) should hold a licence and provide advance payment protection for sales directly to the public. Furthermore, we recommend that a time limit be added as a requirement.

b. Foreign Originating Charters

- *Should the size of the aircraft continue to be a trigger to obtain a charter program permit?*

Air Canada Response:

No. It is unclear why such a trigger is required; this is an unnecessary regulatory constraint.

- *Should consideration be given to streamlining the processes for the acceptance of foreign originating charters?*

Air Canada Response:

Yes. Regulatory disharmony on an international level is a substantial issue in aviation with consequences on many levels, the least of which is undue administrative burden, and some of which can go as far as resulting in operational constraints. Such streamlining who be in keeping with the spirit of the Chicago Convention.

- *Should other regulatory requirements, such as minimum advance booking before each flight, the obligation for passengers to purchase return transportation, and a minimum period of stay in foreign country prior to return be maintained?*

Air Canada Response:

No. This creates an unnecessary regulatory constraint.

c. Advance Payment Protection

- *Should APP, in the current market environment, be maintained?*

Air Canada Response:

Yes. Advance payment protection (APP) in the case of charters sold to the public, and in absence of an alternative program in all Canadian jurisdictions, is a strong protection for consumers to ensure that they will be reimbursed

when travel services fail. Many regulators around the world have similar frameworks, including certain Canadian provinces.

Elsewhere, one common method of protecting passengers has been the use of tax-funded protection funds for consumers of travel services. Quebec and the United Kingdom, for example, have such funds in place. Other jurisdictions are using these funds to implement a repatriation preparedness program that serves this purpose.

However, the use of a taxation mechanism, or any similar form of added cost to tickets is unwelcome, particularly in Canada where industry taxes and fees are already onerous and exceptionally high. Air Canada believes that Minister Garneau is right to want to reduce them.

The use of advance payment protection would allow the Agency to successfully achieve its objective while avoiding additional taxation for consumers.

This requirement is part of the normal cost of doing business since licensees are already required to demonstrate financial fitness. While we understand the Agency's current concern that the protection offered by this regime only applies to 1% of Canadian origin international passengers, 1% represents a large number of Canadian consumers. The elimination of APP would leave these passengers unprotected, and so this provision should continue to be applicable following the adoption of new regulations. There is no guarantee that these passengers would be protected by credit card coverage, if any, and travel agent protections regimes like the Quebec one do not apply to air carriers. The elimination of the APP would leave a gap for a large number of passengers, while keeping it has little downside.

Conversely, scheduled operations are typically well-established, long-term operations which often require investment and ongoing commitment to ensure the stability and success of a route. Such operations are less likely than charters to suddenly cease and do not warrant the level of consumer protection that may be warranted for charters.

In fact, Air Canada not only recommends preserving APP, but also recommends that the Agency adopt an emergency action plan that provides for the manner in which the sums will be disbursed and emergency procedures that will ensure the return of all passengers stranded as a result of a failure of a charter operator. Having the sums at the ready is not sufficient and the creation of a detailed plan of action should be a priority.

d. Permit and Notification Filings

- *Should the permit application and issuance process be replaced with advance notification?*

Air Canada Response:

Perhaps, depending on how often the Agency handles such charter applications currently. This is not clear from the discussion paper. It seems that this proposal covers only situations where the air carrier's non-scheduled international licence does not authorize the service. It would be helpful to better understand what evaluation, if any, is made by the Agency when receiving such applications today, and whether there remains a need to such a review. There may be valid political or security-related reasons for the rights not to be provided through the licence.

- *If so, is notification 48 hours prior to a flight a realistic timeframe?*

Air Canada Response:

Yes.

B. Licensing

1. Code-Sharing and Wet-Leasing - General Comments and Considerations

i. Code-Sharing

Unnecessary Regulatory Burdens

We welcome the recent initiatives undertaken by the Agency to simplify the code-share licensing process (i.e. web forms, indefinite approvals, etc.). Air Canada believes such efforts should continue.

For scheduled operators around the world, code-sharing is a fundamental business practice. To accommodate these evolving services and future service models that will continue to improve the ways by which air carriers meet the needs of their customers, the Agency should adopt a less stringent approach in the way it regulates code-share services.

For example, there should be no need for marketing carriers in a code share context to hold a Canadian Aviation Document (CAD), which, in fact, is an unclear and not clearly defined term. This document has thus far been interpreted as an Air Operator Certificate (AOC) issued by Transport Canada, and if it remains as such, this requirement will continue to be unduly burdensome, particularly for foreign air carriers who wish to sell

services to Canada on flights operated by Canadian carriers without operating to or from Canada, and which, as a result, do not already have a Canadian AOC.

There is no practical reason for which a foreign carrier should be required to hold a Canadian AOC issued by Transport Canada, and there is no valid policy objective that justifies the need for a CAD requirement.

We understand that due to the requirement of holding a CAD in order to obtain a licence, there is now a specific form of code-share-type CAD being issued to airlines marketing, but not operating, services to and from Canada but this is a mere band-aid used to address a regulatory incongruity.

Code sharing is a basic commercial agreement where two airlines cooperate in offering services that otherwise may not be offered to passengers. It is a wide spread practice in the industry that is similar to interlining while facilitating passenger baggage flow, and bears no more safety or other operational concerns than interline.

While the operation of air services itself should remain subject to regulatory overview by the regulator of the operator's country for safety and security reasons, there is no need for the basic commercial arrangement of code sharing to be under any additional regulatory overview, other than to ensure the proper availability of existing traffic rights.

This is in line with the approach taken in the United Kingdom, (and indeed, other European countries) where the UK CAA simply requires a notification identifying, by name, the code share partners of airlines operating into and out of the United Kingdom from countries with a liberalized agreement with the EU. In Canada, a similar requirement for public disclosure of partners would effectively and sufficiently address the requirement for consumer protection.

For Canadian airlines, a CAD or AOC is already required by the licensing process, which is still an appropriate check for operating airlines. But such a requirement in the context of a code share is unduly burdensome, particularly so when liberal BASAs are in place, where there should be no need to review or approve code share agreements. Indeed, the approval process should be eliminated altogether in such cases.

Recommendation

One efficient way to alleviate the regulatory burden in such circumstances is to eliminate the requirement for a marketing carrier to hold a license in code share situations and to replace the license with a simple code share approval. Even the requirement of an approval should be waived when a liberal BASA is in place, particularly a BASA where the code share rights have no limitations on code share services (e.g. frequency, capacity, routings and points).

The code share approval could contain the usual conditions that a licence contains, and the regulations could contain a specific prohibition to sell

services without a licence *or code share approval,* as well as the requirement to disclose the name of the operator.

This would align Canada with other countries. In fact, in line with the spirit of the Chicago Convention[3], when an operating carrier is duly authorized to operate by a foreign entity, the Agency must rely on this foreign authorization whether in the context of a code share agreement or not.

We also welcome the proposal to shorten the notification process to 5 days (instead of the current 45 days).

ii. Wet-leasing

The purpose of Canada's Wet-Lease Policy is, among other aspects, to protect the Canadian public interest. This is an important policy objective that should be entrenched into regulations for the Agency to administer. Other aspects of wet-lease review should follow the simplified approval process recommended above for code sharing.

Furthermore, it is important to align regulatory requirements with the fundamental policy objective, recognizing the need to ensure flexibility for doing business.

Air Canada believes that the only policy-making criteria for such operations are: the need to ensure that operators are safe, insurance is available, financial fitness is sufficient, traffic rights and foreign ownership requirements are complied with, and that there is public disclosure of the name of the operator. There is no need to regulate any further.

Regulations are already in place to ensure public disclosure (no need to have it as a specific condition of a code share or wet-lease approval); insurance regulations are also in place, and certificates of insurance can be issued to confirm coverage. The US make no distinction between code share and wet lease (Capacity purchase): instead, disclosure requirement obligations are uniformly more onerous, and has both doing business name and legal name of operator. Similarly, the framework for code share should also apply to wet-leases, subject to added requirement under the wet-lease policy, since these are driven by the valid desire to protect the Canadian public interest.

Should the Agency decide to keep an approval process in limited cases, this approval process should indeed, as proposed in the supplemental Discussion paper, not exceed 15 days, as the current 45 days often hinders commercial objectives, especially since unexpected wet-leases often

[3] 1944 Convention on International Civil Aviation, article 6.

address unforeseeable and short term needs. Moreover, Agency intervention should be limited to ensuring that adequate insurance is in place and that the operator is safe (e.g. IOSA certified or its equivalent).

We welcome the Agency proposal to remove the requirements of approval of US carriers. This proposal builds on section 8.3 of the ATR and recognizes the liberalized regime in place between Canada and the US.

iii. Capacity Purchase Agreements

In the context of the Jazz name change a few years ago, Agency staff required Air Canada to amend all its existing code share agreements to reflect the name change; this was an unjustified intervention into commercial agreements, and entirely unnecessary from a public interest perspective. The Agency should not be involved in reviewing the terms of confidential commercial agreements between code share or wet-lease partners.

2. Code-Sharing and Wet-Leasing - Responses to Agency's Proposals Discussion Paper September 1, 2017 – Specific Questions asked by the Agency

i. Distinction Between Code-Sharing and Wet-Leasing

- *Are the definitions for code-share and wet-lease arrangements currently used in the guides consistent with practices in the industry and the legislative purposes underpinning the ATR?*

Air Canada Response:

Yes.

- *Is there any reason why these definitions should not be included in the ATR?*

Air Canada Response:

Yes. While there is a lack of clarity in the industry between code share, charter, wet-lease and capacity purchase agreements, as various regulators around the world use different terms and have different regulatory requirements for each, we do not believe that clarifying these terms would be beneficial. Such definitions may add another interpretation to terms that already have different definitions in different countries and create unforeseen complications.

- *Are there any specific benefits that will come from including these definitions in the ATR?*

Air Canada Response:

While we have been in situations where demonstrating to a foreign regulator that a particular operation had been approved by the Agency under Section 8.2 was difficult as a result of the absence of specific references to the terms "wet lease" or "capacity purchase", etc., we do not believe that adding such definitions would provide sufficient benefits to warrant unduly burdening the ATRs with such definitions. Additional definitions may lead to categories into which each operation would need to fit and may add unnecessary rigidity.

Should the Agency decide to add definitions, these definitions should have the sole purpose of clarifying that approval for such operations fit within one unique regime, rather than establishing a different regime for different operations. Such a framework would hinder the flexibility needed for innovative business arrangements in the aviation industry and would likely create confusion at an international level (for example, in Europe, capacity purchase agreements, which are long-term deals, are called wet-leases, whereas the Canadian regime views wet-leases as temporary agreements).

- *Should other types of arrangements also be defined?*

Air Canada Response:

Capacity Purchase Agreements are becoming more common, especially in North America. But as stated above, the added benefit of defining such terms is unconvincing in light of the risk that in adding such definitions, the Agency would lay the groundwork for a complex and inflexible regime.

ii. Amended Approval Requirements for Code-Sharing and Wet-Leasing

- *Should a move be made to a notification instead of an approval process for code-sharing arrangements made pursuant to bilateral agreements?*

Air Canada Response:

Yes, particularly in situations where bilateral agreements contain open code share rights. This would bring Canada in line with other modernized and innovative regimes such as the U.K.'s.

- *Should the minimum notice period for code-sharing arrangements be changed to 5 business days before the first flight?*

Air Canada Response: yes

- *Should the minimum filing time to seek Agency approval for wet-leasing arrangements be changed to 15 business days?*

Air Canada Response: yes

- *Are there any other changes that could be made to the approval and notification requirements for code-sharing and/or wet-leasing arrangements?*

Air Canada Response:

We recommend removing the requirement for Agency approval of arrangements with carriers from countries with which Canada has a liberal BASA, including US carriers.

- *Should the ATR be amended to remove the requirement for Agency approval of services between Canada and the US, when such service is operated by licenced air carriers that are either or both Canadian or US carriers?*

Air Canada Response: Yes.

iii. Related Matters that will be Considered in the Context of Future Consultations on Air Passenger Protection

We have noted the Agency's comment to the effect that "*to provide clarity to consumers, it may be reasonable to require that air carriers identify the carrier responsible for flight check-in procedures and to provide passengers with reconfirmation contacts on all travel documents (including itineraries). This would help consumers know which ticket office or check-in kiosk to report to at various points of their itinerary*. *In addition, clearly establishing in the ATR that the marketing carrier must apply its published tariffs to the carriage of its traffic would provide greater certainty regarding which carrier's terms and conditions of carriage apply and would be consistent with past Agency determinations*."

Impracticability of Applying Marketing-Carrier Rules

The above statement from the Agency seems contradictory. The Agency would require marketing carriers to clearly inform customers that they must check-in with another carrier while at the same time telling them that the marketing carrier's terms and conditions will apply to that carrier.

The reality is that to expect a carrier to apply another carrier's terms and conditions to certain passengers who purchased a flight marketed by another airline, at least with regards to those terms and conditions of carriage which pertain to its operations – for example, the types of products and services offered; restrictions on the carriage of certain items due to safety or security requirements; etc. – is impracticable, highly complex and prone to failure.

In fact, an important purpose of the operating carrier disclosure is to inform passengers that they will be subject to different terms and conditions of carriage when travelling with that disclosed carrier.

It is essential that the Agency expressly recognize the reality that a marketing carrier will never be in position to fully apply its tariffs and terms and conditions when passengers are traveling with another operating carrier. There are, for instance, safety, security and operational policies applied by the operating carrier which are not uniform throughout the industry and that cannot be aligned between carriers due to operational, safety and security considerations as well as, for instance, competition law restrictions. Any requirement to the contrary is not susceptible of compliance.

This is an industry reality that the Agency can no longer ignore without impugning its own authority and credibility: imposing the principle that marketing carrier rules apply to all situations is not in line with well-established industry realities and is not practicable or even possible.

Recommendation

Air Canada recommends that the Agency recognize this industry reality and agrees with the Agency that marketing carriers should direct passengers to the operating carrier for check-in and for specific information pertaining to its products, services, and restrictions, so that they can adequately ensure that their needs addressed. This would avoid creating false expectations that the marketing carrier rules will apply systematically.

There are significant technological barriers for airlines to communicate to each other using different systems. We cannot, for instance, be expected to include on the Itinerary-Receipts a disclosure of specific airline operator's details such as check-in locations, particularly when such information is constantly evolving.

3. Air Insurance

i. General Comments and Considerations

Air Canada supports increasing the minimum liability limit to align with international standards.

ii. Response to Specific Questions asked by the Agency - Discussion Paper December 19, 2016

- *What changes to the ATR might be considered to improve the air insurance regime and ensure that air insurance requirements continue to be appropriate over time?*

Air Canada Response: The liability limit per passenger seat is lower than common standard in the industry (about 5 times lower), which may need to be raised to align with the norm.

- *What would constitute an adequate amount of passenger liability and public liability coverage and why?*

Air Canada Response: See below. Current requirement of CA$300,000 could be raised between CA$400,000 and CA$500,000 per passenger seat in order to fall within international standards

- *What amendments, if any, could be made to:*
    1) *the allowed standard exclusion clauses;*
    2) *the certificate of insurance form;*
    3) *the certificate of endorsement; and*
    4) *the annual filing requirement?*

Air Canada Response:

1) No amendment is necessary in the allowed standard exclusion clauses.
2) No amendment is necessary. Certificates of insurance should be sufficient to prove insurance. The certificate of insurance is normally the only evidence of coverage that is required and submitted.
3) The amendment we propose is not to have to provide a second certificate, i.e. the certificate of endorsement which is redundant with the certificate of insurance. Any and all requirements should be contained in one document, being the certificate of insurance. The certificate of endorsement contains evidence of AVN52C and notification obligations in the event of a material change in the policy, which could easily fall under the certificate of insurance and streamline the process.
4) We have no comments on the annual filing requirements.

iii. Response to Specific Questions asked by the Agency - Discussion Paper September 1, 2017

a. Minimum passenger liability coverage

- *Should the minimum level of liability insurance be raised? If so, would an amount that reflects the change in the level of inflation (i.e. $680,000 CAD per passenger seat) be appropriate?*

Air Canada Response: the suggested amount of $680,000 appears high compared to other jurisdictions in the world. A limit ranging between CA$400,000 and CA$500,000 per passenger seat is more common and would be more appropriate.

- *Should the minimum level of liability insurance be updated regularly to keep pace with inflation? If so, would updates every five years (rounding to the nearest $5,000), represent an appropriate approach?*

  Air Canada Response: This sounds reasonable.

- *Would any of the above-referenced changes have a material impact on insurance premiums and the financial viability of licenced air carriers?*

  Air Canada Response: Not on larger commercial carriers.

b. Alignment with the Montreal Convention

- *Should the ATR be amended to clearly state that the operation of an air service include embarkation and disembarkation within the meaning of the Montreal Convention?*

  Air Canada Response: While alignment with the Montreal Convention is acceptable, we do not see the need to clarify. Embarkation and disembarkation are indisputably part of airline's operations and will be part of the insurance coverage. There seems to be no issue around this. Air Canada sees no utility from an insurance perspective to clarify the scope of application of the Montreal Convention as it is well established and settled and does not believe that such a clarification is required. An alternative would be to simply require any insurance coverage to cover, as a minimum, the limits of liability set by the Montreal Convention.

c. Per seat vs. per passenger basis for insurance coverage

- *What would be the impact of amending the calculation of minimum insurance for passenger liability on a per passenger basis instead of per passenger seat?*

  Air Canada Response: Limits based on passengers would impose an undue administrative burden as passenger numbers would have to be calculated frequently and constantly to adjust liability limits. Liability levels would also differ per airline and per aircraft type. Implementing this change would be highly impractical. We know of no country who uses a per passenger basis for determining limits of liability. The per seat basis (capacity) is a fair proxy that reasonably accounts for normalized traffic (the per passenger basis).

d. Insurance coverage for public liability

- *Should the minimum level of liability insurance be raised? If so, would an amount that reflects the change in the level of inflation from 1983 be appropriate? Should the minimum level of liability insurance be updated*

regularly to keep pace with inflation? If so, would updates every five years (rounding to the nearest $5,000), represent an appropriate approach? Will any such changes have a material impact on insurance premiums and the financial viability of licenced air carriers?

Air Canada Response: See our response for passenger liability. The same amount should apply in the case of public liability, and our responses are the same.

e. Persons not on board

- *Should the ATR be amended to require that the minimum public liability insurance coverage include the same per person coverage for persons not on board the aircraft as the minimum passenger liability coverage per passenger?*
- *Will any such changes have a material impact on insurance premiums and the financial viability of licenced air carriers?*

Air Canada Response: We adopt the same response as above.

f. Exclusions

Air carrier employees

- *Should employees not on board the aircraft who are not acting in the course of their employment be included in, or remain excluded from, an air carrier's public liability insurance requirements?*

Air Canada Response: the exclusion should remain for the reason expressed in the Discussion Paper.

g. Chemical drift

- *Should the chemical drift exclusion clause be removed from the ATR?*

Air Canada Response: No. The exclusion should be kept on the basis that only carriers causing chemical drift as part of their business should be obligated to purchase insurance to cover that risk.

- *Would its removal impact the ability of air carriers to secure insurance coverage or affect insurance premiums?*

Air Canada Response: Yes, because commercial air carriers do not need this insurance and having it would likely increase insurance costs.

h. Public liability vs third party liability

- *Should the term "public liability" be replaced with "third party liability" throughout the ATR to increase clarity and to better align with other international regimes?*

Air Canada Response: Yes. "Third party liability" would be clearer.

i. Insurance provisions related to aircraft with flight crew arrangements

- *Should the indemnity provision be removed from the ATR?*

Air Canada Response: N/A. Air Canada would always ensure adequate indemnity provisions in its contractual arrangements, so this change would have no impact on Air Canada.

- *Should the ATR be amended to require that the additional insurance afforded to the contracting air carrier be primary and without right of contribution from any other insurance policy held by the contracting air carrier?*

Air Canada Response: N/A…Air Canada would always ensure adequate coverage from the contracting air carrier and is comfortable with the current regime.

j. Other

- *Should changes be made to those Agency forms and to the annual filing requirement process?*

Air Canada Response: No, Air Canada sees no need for such changes to be made.

4. New Business Models and Industry Tools

i. New Technologies and Innovations - Response to Specific Questions asked by the Agency - Discussion Paper December 19, 2016

- *Do the regulations need to be amended to proactively keep pace with changing air service business models? If so, how?*

Air Canada Response: Yes.

New technologies and innovation are being adopted by consumers at record pace and should be recognized as important drivers of consumer choice and business development. The pace of innovation accentuates the need for a flexible regulatory regime.

For example, the current All-inclusive Air Price Advertising Regulations (ASPAR) do not provide sufficient flexibility, as drafted, for innovative marketing practices and the competitive landscape where regulated entities are competing with parties that are outside the scope of the regulatory regime.

Enforcement efforts must be more flexible as well, to keep up with rapidly evolving IT services and dynamic advertising. For example, banner advertising, which is widely used, is typically not in compliance with the letter of the law although the legislative objective is reached, since the banner ad itself must be evaluated in the context of the pages to which it is linked.

A regime of detailed regulatory requirements would need to be constantly amended to keep pace, and this is not feasible. Instead, regulations should be flexible and contain general principles of consumer transparency to keep up with the rapid pace of change. The Agency can then provide industry guidance and direction through issuing statements, caselaw, etc.

The Agency should consider performance-based regulation, in line with what the regulatory objectives are. The actual advertisement review should belong to the airline or advertiser, guided by internal checks and balances. Compliance review should have a stratified approach, and consider the corporate culture of compliance, standards of compliance, informed commercial action, whether there is intent to deceive, etc.

ii. Importance of Level Playing Field

Air Canada is constantly and increasingly competing with new competitors for sales and marketing, many of whom that are not directly covered by the current regulations due to their overseas location or business models; they are gaining large portions of the market share (e.g. enhanced search engines). This is in addition to travel agents that have never been covered by ASPAR (though may be covered by provincial regulators). In many cases, competitors are not subject to all-inclusive pricing requirements or disclosure requirements as stringent as those found in ASPAR.

Some regulators in other countries have broader jurisdiction over sellers of travel services and do not distinguish between sales by air carriers and sales by travel agents. In the US, prior to the Trump administration's regulatory freeze, the DOT was expanding the scope of its regulations to cover global distribution systems.

Air Canada is not asserting support for the US approach, but it does support regulatory uniformity and a level playing field for all sellers of air services. The same regime should be applicable to all. Doing otherwise creates market distortion and is highly inequitable. The requirements imposed upon airlines in

Canada for the sale and advertising of air services should be equally applicable to those entities against which it competes for sales.

Indirect service providers (ISPs) are also not covered by current regulations, contributing to distortion of the competitive playing field. Where air travel is sold to consumers by ISPs, confusion is created, causing a lack of uniformity and clarity about how consumers are protected.

Though the Agency should be encouraging and supporting new business models that may benefit consumers, it is essential that all players who compete with one another be subject to the same regulations; any unregulated/unlicensed entity should not be allowed to sell services to the public.

Though the Agency has decided that selling an air service to the public does not equate to operating an air service (and in many respects, this is obviously true), this should not preclude resellers from having to comply with the consumer protection provisions that apply to the sale of air services, whether by airlines or others, where indeed the actual risks and consumers effects are largely the same.

As mentioned, the fact that the Agency has decided that these resellers are not subjected to federal law means that the current regulatory framework fails to impose an industry-wide protection for consumers who are not aware of the risks involved in contracting with an entity that has no tariff or financial requirements. The lack of clarity and standardization creates an opaque, confusing environment which adversely affects customers' perception and interactions with the industry.

Air Canada strongly advocates a new regulation imposing a licensing obligation on entities that resell air services and who position themselves before the public with the look and feel of an airline rather than that of a travel agent. Agency practice with ISPs has been focused on the use of the word "airline", without recognizing that simply preventing the use of the word "airline" cannot and does not in itself change the consumer expectation, interests or needs. Licensing all entities selling air services will not restrict the development of new business models but would ensure that all entities selling only air transportation services hold an appropriate license, establish clear standards and conditions, and clear, consistent and transparent rules for consumers.

5. Excluded Services

Response to Discussion Paper December 19, 2016 – Specific Questions Asked by the Agency

- *Are there changes required to the current list of excluded air services? What is the rationale for any additions to or deletions from the list?*

Air Canada Response: No

- *Do the cited categories within the ATR remain relevant?*

Air Canada Response: [Intentionally left blank].

6. Canadian Ownership and Control

Response to Discussion Paper December 19, 2016 – Specific Questions asked by the Agency

- *What changes should the Agency make to the current approach outlined in the interpretation notes?*

A legislative increase in voting interest thresholds, particularly to 49%, increases the potential for control of Canadian carriers by foreigner owners (particularly privately-held Canadian carriers that are not otherwise subject to the more transparent governance frameworks of publicly held carriers) and should serve as an impetus to ensure that the set of criteria and test for control-in-fact be robust, rigorous, applied in a predictable manner and account for practical realities of how "control" can be effected. This will help ensure that the objective of foreign ownership limits is achieved and a level playing field for all industry players. There must be sufficient transparency in the assessment criteria for stakeholders to be in position to provide a meaningful input.

We expect that the Agency will have to monitor the control-in-fact requirement more closely with the proposed changes to foreign ownership in Bill C-49 on an ongoing basis and it will be important for the Agency to have the means to monitor for it to become aware as early as possible of situations or changes to previous analyses to ensure that effective control by Canadians is always maintained. Ownership and control requirements are key to ensuring traffic rights under Air Services Agreements to which Canada is a party will be exploited effectively in the interests of the country (and for the benefit of the designated airlines) and will not be exercised, either directly or indirectly through affiliates or subsidiaries, by entities from countries that are not party to the Air Services Agreement.

A case-by-case analysis will always be needed having regard to all the relevant considerations and factors to decide on control-in-fact. (See comments below in relation to the EC approach.)

Bill C-49 contemplates the requirement to cap the interest of any single foreign investor and foreign airline investor (s) at 25 percent and therefore assumes that the expected monitoring of such cap by the Agency will be clarified in the revised interpretation guidelines as it may affect the overall control-in-fact assessment. There are various types of investors which may have an interest in airlines (passive investor, funds, financial institutions, etc...). It is important that investors in airlines have clarity on the applicable rules and that there be predictability in their interpretation.

- *Any limits in how they can exercise their 25% interest? What if the investor is a foreign airline?*

In relation to Bill C-49, Air Canada made submissions recommending to clarify the concept of "affiliation" and direct/indirect holdings: the terms "individually or in affiliation with another person" contained in the Bill C-49 definition of Canadian does not clearly refer to a recognized legal concept and could create interpretation issues as to whether it only refers to controlled affiliates or also encompasses other entities or arrangements. If it is not interpreted as not encompassing other entities or arrangements, non-Canadians may structure their means of ownership to acquire a greater control of a Canadian airline than would otherwise be permitted.

As well, the limit imposed on a non-Canadian airline under Bill C-49 does not refer to voting interests being held "directly or indirectly". This appears to actually permit non-Canadian airlines to adopt indirect methods of ownership which could entirely circumvent the restriction.

In addition, we also propose replacing "in affiliation" with "affiliate" and supplementing it with the concept of "joint actors", a recognized legal concept under the securities laws of the Canadian provinces, i.e. "either individually or acting jointly or in concert with another person", which would be broad enough to include controlled affiliates but would also encompass other arrangements where parties are acting in concert without any formal corporate affiliation. These changes would therefore help ensure that non-Canadians cannot circuitously acquire greater control of a Canadian airline than would otherwise be permitted and defeating the policy objectives of the limitations.

If these measures are implemented, either legislatively (as they should be) or through some other regulatory action, this would effectively prevent parties from acting in a manner that undermines the legislative objective, and, with effective monitoring of "control in fact", would provide the natural limits to the exercise of their interests.

- *What approaches are used by other jurisdictions to determine control in fact that the Agency could consider adopting? Why are these approaches suitable and appropriate reforms to the Agency's existing approach and what, if any, unintended consequences could they present?*

We bring to the Agency's attention the recently issued European Commission Notice of 8.6.2017 entitled Interpretation guidelines on Regulation (EC) 1008/2008 – Rules on Ownership and Control of EU air carriers ("EC Regulation". The guidelines outline the detailed methodology followed by the EC when assessing the ownership and control requirements, relevant notably to foreign investment cases.

The notion of *effective control* is defined in Article 2(9) of EC Regulation 1008/2008 as:

"*a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:*

> *(a) the right to use all or part of the assets of an undertaking;*
>
> *(b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking*;"

As stated by the European Commission, "*no guidance can anticipate upon all possible constellations of control of an undertaking, having regard also to the differences between national rules on corporate governance. Any assessment has to be done on a case-by-case basis, looking at the legal and factual position in each individual case*." The Commission provides, however, a detailed list of various factors to consider with usual examples. For example, on veto rights, it is important to consider whether they are "necessary and proportionate to the objective of protecting the value of the minority investment". A more in-depth analysis may have to be conducted depending on the object of the decision to be taken, for example: casting votes, decisions subject to consensus, a right for the foreign shareholder to nominate person for certain important positions, etc.… There is also a need to assess financial links and the degree of financial dependence to ensure that foreign shareholder contributed to the financing of the airline in proportion of its shareholdings.

As indicated in the European guidelines, it is important to assess up to "*those entities at the final level of the ownership and control line*."

Air Canada submits that a similar global, detailed and comprehensive approach, with examples expounded, should be adopted in Canada. The issuance of guidelines, directives and the like could help frame the issues in a concrete manner. The Agency will inevitably need to perform a detailed analysis of the corporate governance of the airline and investors involved and make an assessment of the various issues and factors capable of influencing the decision-making on important strategic business matters such as shareholder rights, financial ties and business cooperation, but laying out examples and scenarios in advance as comprehensively as possible in a detailed fashion can contribute significantly to setting parameters and expectations.

- *Under what circumstances should the Agency make public its determination on control in fact? What would be the benefits of adopting such an approach: for the industry, for licence applicants and for licence holders, and for Canadians more broadly? What would be the risks and how might they be mitigated?*

Air Canada submits that subject only to preserving the confidentiality of business secrets, the Agency should make public its determinations on control-in-fact:

1) Doing so will help set and continually define parameters. In a context that requires case-by-case analysis, it is the only effective means of establishing coherent standards and providing the guidance necessary that will affect all stakeholders and help them settle business arrangements with some predictability. Failing to do so leaves the matter opaque, and creates a degree of mistrust. Transparency in this context is essential.

2) It would also be useful to consult industry when exemptions to any applicable rules are contemplated in order for the industry to provide any additional perspectives based on actual experience and practical insight.

   Recent examples of new entrants in the Canadian market has shown the need for more transparency on business models and plans in order to ensure that there is a level playing field in the application of the regulatory regime.

C. Monitoring, Compliance and Enforcement

Discussion Paper December 19, 2016 – Specific Questions asked by the Agency

- *How should the Agency's monitoring, compliance, and enforcement regime be updated? Are there improvements that could be considered to further support effective Agency action?*

Foreign carriers operating in Canada are currently not subject to inspections as domestic carriers are, which creates an uneven playing field and confusion for consumers. (To the contrary, the US DOT is very active in inspecting and enforcing against foreign US carriers). The Agency should ensure that its regulations are followed by foreign carriers as well and should actively monitor compliance.

Moving away from a complaint-based regime to an enforcement model that takes into account patterns and systemic problems versus individual, and often relatively minor instances or failure, would be more constructive and would effectively improve airline practices for consumers. Such an approach would

also ensure that all airlines are subject to the same rules and that consumers can expect similar standards from all airlines.

- *Do the Agency's communications and guidance materials and tools support the achievement of ongoing compliance with Agency decisions, determinations and regulatory requirements?*

Air Canada Response:

Agency's Advertising Campaign

The Fly Smart brochure does provide a good overview of the rules that apply to air passengers and carriers. However, the Agency should be cautious about publicity (through creating videos or summaries and the like) which oversimply the applicable rules, rules that may not apply evenly in all situations, and should take care not to unduly promote passenger complaints on minor matters that do not have a systemic cause or that have little relation with conditions of carriage.

ASPAR Violations

Air Canada's experience with enforcement actions reveals the Agency's punitive approach. Air Canada submits that there should be a more constructive dialogue to promote compliance. Air Canada is proud of its trustworthy, reliable brand and having a corporate culture that rewards strong ethics and compliance. Air Canada does not promote misleading advertising practices and never intends to mislead its customers when marketing its products. However, mistakes and oversights may happen especially in relation to technology glitches.

Past practice has shown that too often when the Agency is aware of such an issue, it simply "snail-mails" a notice of violation with monetary penalty to Air Canada's head office, rather than informing Air Canada as soon as possible so that the oversight can be rapidly addressed. A more pragmatic approach, which includes informal alerts, formal warnings and an escalation process would be much more constructive in rectifying errors than encouraging punitive party complaints.

In any administrative regime, penalties are meant to have a dissuasive effect. And this is essential, especially when non-compliance is repeated or the event shows contempt or disregard for compliance obligations. However, Air Canada respects its obligations and aims to fulfill them consistently. We provide recurring training to all employees engaged in advertising to ensure that rules are followed and have published guidelines which are available to all employees to disseminate knowledge and reinforce awareness. In fact, the Agency has recognized the high standard set by Air Canada and often refers other airlines to Air Canada's practices.

Air Canada urges the Agency to review its enforcement practices and more regularly consider context when determining sanctions and looks forward to a constructive working relationship with the Agency to the benefit of consumers.

D. Other Considerations in Relation to the ATRs

Air Canada wishes to add comments on a few topics not addressed in the Discussions Papers but relevant in the context of a revamp of the ATRs. Although the Agency has not specifically requested comment, nor has it circulated draft regulations, we wish to raise certain additional issues. We may have further comments once the Agency has more fully reviewed other aspects of the ATRs and once draft regulations are issued.

1. Reduction or Discontinuance of Domestic Services Obligations

Over the years, the mandate of the Agency has not kept up with the changing market for the air industry and the government's decision to deregulate domestic air travel.

One key example is the reduction or discontinuance of domestic services provisions which imposes obligations that are out-of-date and even archaic.

Consistent with the deregulation of the aviation industry and the elimination of requirements relating to the operation of specific routes, the reduction or discontinuance of domestic services obligations should be removed. Airlines should be free to manage their network based solely on commercial considerations. This liberty is not provided by the current requirements, which are no longer relevant in our deregulated and increasingly competitive industry which is continuously spawning new entrants.

Though the Agency recently rendered a decision rejecting an abridgement of the notice period, this decision was inconsistent with the Agency's past approach of addressing these requests. Air Canada reprotects passengers when it cancels a route; as services rarely stop completely, notification obligations are unnecessary because services are still offered to the destination.

The need to publish notices in newspapers is another archaic aspect where the medium of newsprint is no longer a prevalent form of communication common among most. Moreover, such advance notification no longer serves any purpose in a world where information regarding alternative transportation services is so readily available and easy to obtain.

Because it is in an air carrier's best commercial and public relations interest to engage with a community before eliminating a route, the Agency should let the market self-regulate and refrain from interfering with the principles of a free market. The reduction or discontinuance of domestic services obligations should be removed entirely from the Agency's new regulatory framework.

2. Tariffs

An air carrier's tariff is a document that contains its published fares, charges and all specific related terms and conditions of carriage applicable to air services. It contains a wide range of information such as the compensation limits for lost baggage, the deadlines for boarding, and limits and times for checked luggage.

Tariffs have grown extraordinarily long and convoluted over the years, resulting in a document that most would deem challenging to read and even comprehend. Moreover, all detailed information related to conditions of carriage is available on a carrier's website, which is where the vast majority of passengers find any travel information needed.

Despite this fact, legislation and regulation still requires airlines to update these documents and to file a request for amendment whenever a minor change in policy occurs. The exercise is almost a bureaucratic charade without a purpose. For international services, this requirement leads to a review process by the Agency before carriers can use the updated conditions of carriage. This requirement of filing tariffs in advance no longer exists for the domestic market, which has been deregulated, but there is no logical or justifiable reason for the international market to be treated differently. Bilateral agreements today and the manner in which they are implemented in practice do not support the continued use of tariffs or such high regulatory scrutiny into carriers' terms and conditions of carriage.

This approach imposes an artificial and costly administrative burden upon carriers, preventing them from changing their conditions of carriage in a timely and efficient manner and to match competitive initiatives without providing any benefits whatsoever to the travelling public. In fact, this approach is contrary to the approach taken in jurisdictions like the European Union, where relevant and detailed information regarding conditions of carriage is readily available to the consumer through the airlines' website, but does not necessarily have to be filed with a public authority. This is a far more practical and useful model.

Canada's efforts to liberalize BASA also include the liberalization of tariff filing requirements, thereby removing the administrative burden of filing tariffs and prices. This is in line with international efforts to liberalize tariffs, and in fact, to move away from tariff filing requirements altogether.

Moreover, several carriers are no longer using ATPCO to file terms and conditions of carriage. Many rules are no longer used, as the manner in which airlines interact with each other has changed, and most, if not all, are never read by the vast majority of consumers. Carriers operating to and from Canada do not even maintain their tariff provisions current, although they may make changes when directed to do so by the Agency. This burdensome requirement disadvantages Canadian carriers, who do maintain their tariffs provisions and diligently respond to Agency reviews, concerns and inspections regarding tariffs.

The formatting requirements imposed by the ATR are also unduly burdensome, while providing little added benefit to consumers. These ATR rules should be eliminated (e.g. S120, S124, S125, S127, S132, S133, S135).

In its submissions to the Review Panel of the *Canada Transportation Act*, Air Canada made the following recommendation;

> ***RECOMMENDATION 33:*** *Simplify tariff rules by alleviating obligations to file highly detailed conditions of carriage in tariffs and allow the Canadian Transportation Agency to take into account all information available to passengers on a carrier's website when assessing the validity of the said general conditions of carriage.*

Any modernization initiative that still relies on detailed increasingly incomprehensible (to some) paper filings fails to address an irreversible reality and contributes to needless bureaucracy and even contempt for industry practice.

3. Statutory Filing Requirements

The Act sets the filing requirements for new fare rules for airlines which in certain cases provide for a delay of 45 days before the fares take effect.

Over the years, the Agency has removed the statutory filing requirements for fares, or significantly reduced the filing delay, for many countries based on bilateral Air Transport Agreements.

This rule applies to the international market, as airlines are no longer required to file fares on the domestic market. However, airlines must still provide for a delay of 45 days when making changes to general rules on international markets (s115).

In general, the Agency appropriately waives the requirement for changes that benefit customers. However, this requirement remains unduly burdensome and is an impediment to airlines' ability to remain competitive or make competitive responses to changes filed by its competitor.

There is enough competition to provide customers with many fare options, and the Agency rarely, if ever, refuses requests by airlines to review fare changes. (For example, Air Canada does not know of any new fares that were rejected within the last ten years).

The filing requirement has failed to keep up with the rapidly changing and more competitive market in the air industry. As a result, it creates unnecessary paperwork for both the Agency and airlines, making for a less efficient air industry. For these reasons, we reiterate our comments made under section 2 above which are equally applicable.

Furthermore, the filing of fares does not allow for the recognition of net fares. With the deregulation of the aviation industry, restrictions on pricing were eliminated, resulting in a market driven determination of prices. In line with the Canadian government's flexible approach, Air Canada submits that net fares

should be recognized by the Agency and solely subjected to market forces. They are widely prevalent and common practice in the industry and a prominent method of fare distribution. Fares should be priced and sold by air carriers in a commercially reasonable way that reflects the market reality. As they allow consumers to access lower fares, the Agency should officially recognize these fares, just as the U.S. has.

In its submissions to the Review Panel of the *Canada Transportation Act*, Air Canada made the following recommendation:

> ***RECOMMENDATION 35:*** *Remove the requirement to file and seek approval from the government for international fare and general rule changes 45 days in advance, unless otherwise required under bilateral agreements.*

4. Public Access to Tariffs

Subject to our recommendation to remove the obligation to maintain the tariff, Air Canada also believes that public access to tariff at airlines' physical offices is entirely anachronistic. Today, customers have access to airlines' websites, and most can do so from anywhere, using their personal devices to access the web. Accordingly, the public is well informed of carriers' condition of carriage, as stated in their website.

In addition, not all AC' airport employees have access to the website, for IT Security reasons. This creates airport complexities and operational challenges for agents needing to provide public access to tariffs at airports, which, in reality only ever happens when CTA inspectors are asking to see them. When asked, airport agents must leave their counter and find a lead agent, and go to a desk that has internet access, like a connection counter, ticketing desk, or back office. This requirement to provide public access to tariffs in physical locations no longer makes sense. The public prefers reviewing a carrier's website to get information on terms and conditions of carriage, and on the rare occasion that they review tariffs they do so by accessing a carrier's website. This obligation in S.116 ATR, to provide public access to tariffs at carrier's offices should be removed. Section 67(4) of the Act already provides that the holder of a domestic licence shall provide a copy or excerpt of its tariffs to any person on request; this is sufficient to fulfill any legitimate public-interest need.

IV. CONCLUSION

We thank you for the opportunity to provide comments and feedback on these important proposed changes to air transportation.

We look forward to our continued dialogue on these matters and remain available for any clarifications.