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Mr. Scott Streiner

Chair and Chief Executive Officer
Canadian Transportation Agency
15 Eddy Street, 17th Floor
Gatineau, Quebec J8X 4B3

February 25, 2021

RE: Consultation on New Refund Requirements

Dear Mr. Streiner:

We are responding to the Agency's consultation on new refund requirements pursuant to Minister Garneau's directive of December 21, 2020 to develop a new regulation to address future large-scale flight cancellations.

1. APPR, by which Carriers are Abiding, Represents a Finely Struck Balance that should be Maintained

APPR imposes onerous compensation requirements that have added substantial costs to operations that need to be balanced with other considerations. This need for balancing was well understood when passenger compensation obligations were first being considered. It was recognised that in exchange for carriers not being responsible for situations outside their control, they were being required to compensate passengers for situations within their control.

Air Canada has been complying with its obligations under APPR as well as with the Agency's "Statement on Vouchers" and other Agency guidance during the pandemic. We have been fully complying with our tariffs and fare rules. We have refunded \$1.6B in refundable fares to date and added greater flexibility for customers holding a travel credit by eliminating expiry times and making it fully transferrable, exceeding the Agency's guidance.

APPR is a strict regime that puts the customer first, while balancing the customer's interests with the legitimate operational constraints carriers face. This balance was reached after extensive consultation, one that recognised that a sustainable regime had to compromise the objective of strengthening consumer rights while avoiding the imposition of an undue financial burden upon airlines.

Upsetting that balance now by imposing refunds for situations outside carrier's control would negate the essential compromise at a crucial time by imposing on carriers financial obligations for events out of their control that were expressly excluded. Overriding the compromise and addressing the issue of refunds in this extraordinary environment in isolation of other aspects of APPR cannot but have unintended and long-term consequences and is, simply, the wrong approach to adopt in response to unprecedented events.

2. The COVID-19 Pandemic has Caused Cancellations Outside Carriers' Control

Travel advisories, border closures, travel restrictions, domestic travel bubbles, quarantines, and proof of negative PCR tests have had (and continue to have) a dramatic impact on passenger demand and, thereby, passenger revenue. These impacts have led to record financial losses, unprecedented cash burn and significant workforce reductions. Based on current and foreseeable conditions, the expectation is for continuing significant cash burn that, without adequate countervailing measures, would seriously and adversely affect Air Canada's liquidity position. An obligation to refund in these extremely challenging circumstances, and without a sectorial support program, would only worsen an already unfathomably difficult situation, as further described below.

Flight cancellations since the beginning of the pandemic are all attributable to the unpredictability and uncertainty caused by ever-changing and stringent government restrictions on travel and entry requirements, changes in contagion levels, ongoing speculation on potential border restrictions, changing geographical scope of confinement rules (red zones) and lockdowns, etc., all of which have resulted in a combination of low booking levels and high passenger cancellations close to departure, in a manner never before seen and wholly unpredictable. Air Canada should not and cannot, on any rational basis, be held responsible for cancellations resulting from these circumstances: they are completely outside its control.

Air Canada refers to previous submissions it made in relation to its request for temporary adjustments to APPR, which provide multiple examples of the sudden and deleterious effects these factors have had on air travel and the highly volatile nature of demand for air travel at this time; they describe how the factors effectively cause flight cancellations. Compounding those factors, more recently, additional measures have been imposed in Canada:

- Flights to/from the UK were suspended on December 20, 2020, with less than 24 hours advance notice;
- Proof of a negative COVID-19 PCR test taken within 72 hours before departure was made mandatory by the Government of Canada for all travellers entering Canada, effective January 7, 2021, with minimal notice, without any potential of reducing the mandatory 14-day quarantine regardless of test results;
- Provincial lockdowns, curfews, and border measures, requiring the public to stay home, such as:
 - o the recently announced lockdown and restrictions in the Province of Quebec, including a strict curfew between 8 p.m. and 5 a.m., which began on January 9, 2021;
 - o the Government of Ontario's stay-at-home order beginning January 13, 2021, severely limiting movement within the province;
 - o Manitoba's extension of a mandatory 14-day quarantine to entrants from all provinces/territories, as of Jan. 27, 2020;
 - o Nova Scotia's extension of a mandatory 14-day quarantine on travellers from New Brunswick (January 9, 2020) and from Newfoundland and Labrador (February 9, 2020); and
 - o New Brunswick prohibiting all non-essential travel into the province, announced on January 22, 2020, and recommending against travel between zones within the province; etc.
- The Federal Government's request on 29 January 2021 that Canadian airlines suspend flights to sun destinations until end April 2021; and
- The Federal Government's announcement that as of February 22, 2021, mandatory PCR testing will be implemented on arrival for international travellers arriving in Canada at the 4 main airports (YVR,YYC, YYZ, YUL), with a mandatory quarantine in a

government-approved hotel for up to 3 days (at a cost of up to \$2,000) until results are received.

Despite these challenges, Air Canada will protect its customers and has been respecting its obligations and fulfilling its responsibility to refund its customers when *it* causes the cancellation. However, to introduce an obligation in mid-course of the worst crisis in aviation history requiring carriers to refund for cancellations caused by a pandemic over which they have no control, would eviscerate the balance struck by APPR at the worst possible time.

3. Impact of COVID-19 on Air Canada

Due to the pandemic, Air Canada saw passenger demand reduced by 90% for Q2, Q3 and Q4 in 2020 compared to 2019 and, as a result, had to (i) reduce its workforce to cut costs to preserve capital by 20,000 employees (more than half its total workforce coming into the pandemic), (ii) retire 79 aircraft from the fleet, and (iii) reduce capital expenditures by \$3B for the 2020-2023 period. These measures all have serious adverse effects not only on the business of Air Canada but on other businesses and, most notably, individuals who depend on them.

The impact of the pandemic on Air Canada's liquidity has required it to fund cash losses and maintain liquidity by raising capital - borrowing through the capital markets in the form of debt as well as issuing more equity. These measures reverse the successes that Air Canada achieved over many years that allowed it to pay back debt and buy back shares and that funded its growth that has benefitted all stakeholders including Canadian travelers. This reversal represents a real threat to its financial health and its ability to compete effectively internationally, against foreign rivals who almost without exception have benefitted from sectoral support at home. To manage through the crisis and preserve as much of the structure of its business as it could, Air Canada concluded several debt transactions in 2020, significantly increasing Air Canada's debt levels. In addition, Air Canada concluded two equity offerings in 2020, increasing the number of shares outstanding, resulting in share dilution.

Air Canada has also had to significantly reduce capacity (on average by more than 80% across the network) which has resulted in cancelling and suspending service to many markets and communities.

All these measures affect people. Imposing greater obligations on Air Canada under APPR will but cause Air Canada to adopt further measures that will impact more people and cause the harm to be further concentrated on those who are directly and indirectly dependent on the industry. To force refunds that were not required by APPR or our tariffs will further harm those who depend on carriers for their livelihoods and are among those hardest hit by the pandemic.

4. No Sectoral Specific Support Program

The Canadian airline industry is one of the worst-hit industries across the country.¹ Yet the Government of Canada has not, to date, adopted any sector specific support for the country's airline industry.

In contrast, in most countries around the world, airlines² - Air Canada's competitors - have received substantial, direct financial support, to the tune of more than the equivalent of CAD \$200B as of the end of November 2020 to help them withstand the devastating impact of COVID-19 on their liquidity. In fact, of the 20 largest international carriers, Air Canada remains the only one to not have received specific sectoral support from its government.

In many of the countries where there were refund obligations, the state aid granted was provided to assist carriers to enable them to make the required refunds in a way that would not make their ability to manage the pandemic even more challenging.³ In certain countries where blanket refund obligations existed, obligations to refund were actually explicitly suspended,⁴ again recognising the threat that airlines, as a critical component of transportation infrastructure, were confronting.

To Air Canada's knowledge, *no* country imposes onerous refund obligations alongside continued restrictions on air travel in the absence of a sector specific support program. Canada would stand alone if it were to do so, putting our vital air transport infrastructure at a severe competitive disadvantage that could be felt for years after the recovery eventually begins.

Air Canada entered the pandemic in a better relative financial position than most of its foreign competitors. However, given the length of this enduring crisis and depending on how much longer it persists, the lack of a government sectoral specific program for our industry with an added obligation to refund adversely and meaningfully affect Air Canada's ability to recover.

Governments must support their air transportation infrastructure and tourism industry if they want to preserve them. In fact, the International Air Transport Association (IATA) deems government aid as having "kept airlines on life support" and that without targeted government assistance, the average airline is deemed to have 8.5 months of cash left at current burn rates⁵. Passenger demand growth, far from recovering, essentially stopped last November, as governments around the world imposed even more stringent travel restrictions to tackle a second or third Coronavirus wave.⁶

¹ Minister Alghabra told Bloomberg in an interview on February 1, 2021, The airline industry has been hit the hardest www.bnnbloomberg.ca/new-travel-measures-increase-need-for-airline-aid-transport-minister-1.1557213.amp.html. See also "The aviation industry has suffered more than most as the pandemic destroys ticket sales and strips companies of cash." <https://www.bloomberg.com/news/articles/2020-07-23/400-000-jobs-lost-at-airlines-during-coronavirus-pandemic>; "These are the airlines teetering on the brink of COVID-19 ruin" (November 2, 2020)

<https://www.japantimes.co.jp/news/2020/11/02/business/corporate-business/airlines-coronavirus/>; "A staggering 43 commercial airlines have already folded so far this year as air travel reels from the hardest hit in its history after the coronavirus pandemic brought it to a near standstill." <https://www.cNBC.com/2020/10/09/airline-industry-to-face-more-collapses-bailouts-and-monopolies-ceo.html> (October 8, 2020).

² See Annex 2, or <https://airlinebailouttracker.wordpress.com/>

³ "Huge aid packages saved airlines at a time when air travel came to a near standstill because of the coronavirus, but the worst is not over, analysts said." <https://www.cNBC.com/2020/10/08/over-40-airlines-have-failed-in-2020-so-far-and-more-are-set-to-come.html>

⁴ See for example, in Brazil, Provisional Measure 925.

⁵ Slide https://otc-cta.gc.ca/sites/default/files/nacc_iata_appr_temporary_exemptions_additionalinformation1.pdf

⁶ Passenger Demand Recovery Grinds to a Halt in November <https://www.iata.org/en/pressroom/pr/2021-01-07-02/>

5. Government Regulatory Agenda Fails to Appreciate and Adapt to the Extent of the Crisis

Our request for an extension of an urgent exemption to certain APPR rules regarding timelines for notifications of delays and cancellations, originally granted by the Agency until June 30, has now remained unanswered for over 6 months. Our request for suspension of the entry into force of the more costly and resource-intensive aspects of the new accessibility regulations has gone unanswered, while the Agency leads a consultation on the question well beyond the date of their entry into force.

Air Canada is expending tremendous effort and resources to maintain some degree of operations to provide vital transportation links, adjusting systems and deploying customer communications on short timelines. We are reacting with care and professionalism, in line with our core values and in the best interest of our customers, at the risk of affecting our bottom-line.

The approach now taken by the Federal government to consider imposing yet more onerous financial requirements on the aviation industry while it is in this state, is deeply concerning. Every country in the world depends on their national carriers to provide vital aviation route infrastructure that serves the economic interests of the country.

The Canadian air transport industry's contribution to Canada's economy and prosperity is no less vital than the contribution of other carriers to their home economies elsewhere (and perhaps even more so given the expanse of our land) and is well-documented,⁷ as is the devastating impact this pandemic has caused⁸. Aviation has spin-off benefits for every sector of the Canadian economy: a worldwide transportation system stimulates international trade, tourism and foreign investment. As such, aviation can drive economic recovery or, alternatively, cause it to lag. It is essential to our country's economy and prosperity that the government stand with the airlines. Not to mention the thousands upon thousands of individuals affected.

Minister Garneau, while in the Transport Portfolio, had indicated that he would like this new refund requirement to apply to future flights⁹, but this will not resolve the situation of consumers currently affected. Under normal circumstances, customers can be rerouted within a reasonable timeframe, so these refund requirements are not necessary in normal circumstances. They may be relevant for the next pandemic, or the next major global crisis, as recognized by Minister Garneau in his December 21, 2020 statement: "In the event of a future situation that causes similar large-scale flight cancellations, this gap needs to be closed so that travellers are treated fairly."

But solving for an isolated, once in a lifetime event by a general rule is fraught with risk and is not a sound approach. The complexion of such circumstances cannot be predicted. Extraordinary situations do not replicate in patterns; they are therefore better handled on an exceptional basis rather than through a blanket requirement that would have a devastating impact if applied on a global scale during a catastrophic event of the kind we are currently enduring.

⁷ See annex 3, or <https://www.iata.org/en/iata-repository/publications/economic-reports/canada--value-of-aviation/>

⁸ "Latest estimates show that the aviation sector's direct GDP contribution to Canada's economy dropped by US\$10.39 billion in 2020 vs 2019, placing some 146,000 Canadian jobs at risk. The year-on-year fall in GDP contribution to the wider travel and tourism economy is estimated at US\$21.29 billion with some 286,000 jobs at risk." <https://www.iata.org/en/pressroom/pr/2021-01-02/>

⁹ That it would apply only to future flights makes sense, as new requirements cannot be imposed on a retroactive basis.

6. Timing for Implementing New Requirements is Detrimental

Given the low probability of a catastrophic event causing widespread flight cancellations as we are currently experiencing occurring in the short term and the fact that we are still in the middle of this major crisis, the government should focus its immediate efforts on the addressing the current crisis, including on preserving the sustainability of the airline industry, rather than rushing to introduce new regulations. It is far too early to assess the implications and de-brief about the current crisis, and even more so to apply solutions to future crises while the current one ravages. Air Canada urges the Agency to review and postpone the timeline in which it is considering these changes.

New obligations should certainly not be imposed while the effects of the pandemic are still being felt and travel restrictions are still in effect. It is not appropriate to change the rules in the middle of a crisis, risking precipitating unintended consequences that may be worse than the ill being solved for.

7. Conclusion

In conclusion, we reiterate that, throughout this crisis, Air Canada has strictly abided by its obligations under APPR and exceeded the Agency's guidelines on refunds. We have provided refunds for a total amount exceeding \$1.6B. Changing the rules in the current context would further disrupt our industry, one of the worst hit in the country, and retard if not put at risk its recovery.

We have responded to the Agency's consultation questions in the annex. We respectfully submit that the most effective way to resolve the refund challenge without jeopardizing the viability and competitiveness of this country's travel and tourism industries (as well as its aviation infrastructure), which Minister Garneau had stated was among his objectives at the time he issued this directive, is to develop a sectoral support program for the aviation industry. The Government should focus its efforts on developing a regulatory framework that supports the industry's safe restart as opposed to devising regulations that impose additional costs in an environment where revenue is at historically low levels, markedly below anything sustainable.

To this end, Air Canada continues to be deeply engaged in discussions with government and looks forward to the collaborative development of a solution adapted to this exceptional situation.

Thank you for your time and consideration of these matters.



David J. Shapiro

cc. Honourable Omar Alghabra, Minister of Transport
Marcia Jones, Chief Strategy Officer, CTA
Michael Rousseau, President and CEO, Air Canada
Arielle Meloul-Wechsler, Executive Vice President, Chief Human Resources Officer and
Public Affairs
Martine De Serres, Managing Attorney, Customer Regulatory Resolution

Annex 1
to the Agency's Consultation on New Refund Requirements
Response to the Agency's Questions

Note on Legal Validity of New Refund Requirements

The Minister of Transport has limited, well-defined powers to issue directives to the CTA¹⁰ in respect of a carrier's "other" obligations,¹¹ that is, other than those already stated in s. 86.11(1) of the Act. Section 86.11 of the Act does not provide power to the CTA to make regulations in respect of refunds for situations outside carrier's control. On the contrary, the power to make regulations in respect of refunds is clearly and explicitly limited to situations within carrier's control. As such, the regulatory changes being considered are likely illegal and *ultra vires* of the Act. The Act itself would need to be amended for the CTA to have the powers to validly create refund obligations for situations outside carriers' control.

We note that Mr. Streiner recognised this in his testimony to the House of Commons Standing Committee on Transport, Infrastructure and Communities¹²:

"On the topic of refunds, it's important to understand that the reason the air passenger protection regulations don't include a general obligation for airlines to pay refunds when flights are cancelled for reasons outside their control is that the legislation only allows the regulations to require that airlines ensure that passengers can complete their itineraries. As a result, the APPR's refund obligation applies exclusively to flight cancellations within airlines' control.

(...)

I don't think anybody identified the gap. To be clear, the gap stems from the legislation. The legislation gave the CTA the authority to make the air passenger protection regulations.

If you read the relevant section related to cancellations that are outside the control of airlines, it constrains our ability to make regulations to only requiring that airlines ensure that passengers can complete their itineraries.

Frankly, if the section had been more permissive, we might well have established a refund obligation as we did for cancellations within the control of airlines, but we were constrained by the language of the legislation." (emphasis added)

- 1. The entitlement to a refund will apply if the airline cannot complete the passenger's itinerary within a reasonable time. In the context of an event outside of an airline's control - such as a border closure, security incident, or volcanic eruption - what should be considered a "reasonable time" for completing a passenger's itinerary?**

¹⁰ S. 86.11(2) of the Canada Transportation Act (the "Act")

¹¹ S. 86.11(1)(g) of the Act

¹² December 1st, 2020: <https://www.ourcommons.ca/DocumentViewer/en/43-2/TRAN/meeting-8/evidence>

The obligation to rebook should not begin until after the end of the uncontrollable event, as is currently set out in APPR. The end of the event must be defined as triggered once the airline is able to fly again. In the current case, all restrictions must have been lifted for more than 90 days for the refund obligation to kick-in.

Once the event has ended and rebooking becomes possible, we propose that the "reasonable time" for a passenger to complete their itinerary should take up at least 20% of the duration of the uncontrollable event and begin once the event is over.

In no case should the timeline for a worldwide crisis be treated the same as one that occurs in a specific region, where aircraft can be redeployed to carry stranded passengers. For uncontrollable events occurring in a specific region (outside a worldwide crisis), reasonable time for completing a passenger's itinerary should be no less than 72 hours starting after the end of an uncontrollable event. This proposal is based on typical recovering times for flight disruptions occurring far from an airline's home country.¹³

2. The entitlement to a refund could potentially apply not just in the context of a flight cancellation, but also a "lengthy delay." What should be considered a "lengthy delay"?

Outside of a crisis context such as the one we are in, a lengthy delay should be considered to exceed 25h from scheduled departure time. Regulations should allow sufficient time for recovery prior to a rebooking obligation to kick in.

3. What should a refund cover? For example:

- **The unused portion of the passenger's ticket;**
- **Any additional services the passenger purchased, but did not use (for example, seat selection or extra baggage);**
- **The full cost of the passenger's ticket, if their trip no longer serves a purpose because of the flight disruption.**

There should be no refund obligation for situations outside a carrier's control, particularly during a major global crisis.

During normal operations, outside a major global crisis, Air Canada would not be opposed to a refund obligation that covers no more than the unused portion of the ticket and unused ancillary services, if it was unable to rebook a customer within 72h of the end of an uncontrollable event.

Airlines should never be responsible for anything beyond services paid but not used, such as the unused portion of a ticket and additional services associated with that portion, such as seat selection.

4. How should airlines be required to refund passengers? For example:

- **Using the same method used to buy the ticket;**

¹³ Accounts for the time needed to send fresh crew across an ocean and provide legally required crew rest.

- **In monetary form (for example cash, cheque, or a bank account deposit);**
- **Passenger's choice of money or other forms offered by the airline (such as vouchers or rebates).**

When a refund is owing, customers should be free to choose a refund to original form of payment or voucher.

However, vouchers are adequate compensation in the event of lengthy periods of global, catastrophic events such as the one caused by the COVID-19 pandemic, when rebooking options are severely limited.

When airlines' entire networks come close to a full stop, as they have during this global crisis, they lose their ability to generate revenue, yet continue to incur significant fixed costs, such as payroll and rent on aircraft and immovables. The airline industry is well known for having high fixed costs and low profit margins. Forcing airlines to refund in situations such as these, with no external financial support, would cause them to suffer serious financial harm leading to possible insolvency. This is the situation that Minister Garneau repeatedly and explicitly stated he wished to avoid with these new refund rules.

Should the Agency nonetheless decide to implement requirements for cash refunds, no refund other than to original form of payment should be required. This is the standard approach for refunds in all circumstances where one is owed, at least in the airline industry. This limits possibilities of fraud, as well as the complexity and exposure to liability when the passenger and the person who purchased the ticket are not the same person.

5. How much time should airlines have to provide refunds to passengers under the new requirements?

Airlines cannot be expected to refund within weeks in the context of a global crisis. As evidenced by refund timelines announced by many airlines globally, many months may be needed to adjust systems to perform mass refunds, and many months *after* the end of a global crisis would be needed to secure sufficient liquidity to withstand refunds, especially in the absence of external financial assistance. The more criteria are added to refundability rules, the more complex the system adjustments and the longer refunds will take to be issued.

Refund obligations should be no less than 12 months from the customer's request, made after the end of the uncontrollable event.

In the absence of a force majeure event affecting the majority of an airline's network, it may take up to 90 days for refunds to be issued in times of high demand.

6. a) Should there be greater flexibility in the requirements for certain types of airlines, or in certain situations? For example:

- **Based on airline size (smaller airlines may be, for example, less able to recover quickly after an event outside their control);**

No. Cashflow and the ability to issue refunds is universal to all businesses, just on different scales.

- **If an airline provides essential services (for example, to remote, regional or northern communities);**

No. Fares, schedules and routings in the Canadian aviation market have long been deregulated, and with good reason, following the lessons of the regulated era. Airlines today are free to operate routes on the basis of demand. Uneven regulatory treatment of airlines depending on where they operate will distort competition and create a dangerous precedent for market reregulation. There are a number of other channels that government can use to support community connectivity, and that do not distort competition.

In any event, this question is well beyond the scope of this particular consultation. In fact, it is unlikely that the mandate given to the Agency for this regulatory consultation includes favouring certain airlines over others, a regulatory approach that would inevitably necessitate the inclusion of broader considerations pertaining to a free market economy, competitive analyses and general transportation policy.

- **If the event is large-scale (as opposed to an isolated event like a collision with wildlife);**

Yes. As stated repeatedly above, Air Canada's main concern with refund requirements in situations where rerouting cannot be performed within reasonable time is for large-scale events affecting a large portion of the network. Airlines cannot be expected to have sufficient cash on hand to refund a large portion of customers in a short timeline. Airlines do not typically hold enough liquidity to sustain costs of operations over the long term; in fact, it may be financially irresponsible in normal times to have this much available liquidity.

- **If the event could threaten an airline's financial viability (for example, one that results in operations being shut down for months).**

Yes. See responses provided throughout these submissions.

b) If so, in what areas should flexibility be given? For example, should there be a different:

- **definition of "lengthy delay";**

We see no reason for a different definition, if there are no refund requirements during large-scale event.

- **deadline to provide a refund to passengers.**

Yes. See response to question 5.

7. Events since March have shown that some situations caused by a pandemic are outside of airlines' control, while others may be within airlines' control. An airline's business decision to consolidate flights during a pandemic could sometimes be considered within its control, while government travel restrictions, employee quarantine or self-isolation, and additional hygiene procedures are examples of pandemic-related situations the CTA considers outside airlines' control. Are there other, specific pandemic-related situations that you think should be considered either within or outside airlines' control?

Air Canada refers to its various submissions in respect of its request for exemption from certain APPR provisions, in respect of the current volatility of demand affecting its entire network.

Schedule adjustments made as a result of low demand cannot be dissociated from and, in fact, have the same root cause as those made as a result of government travel restrictions. There is no difference between the reason for a cancellation on a route directly affected by a travel restriction and other cancellations. Networks are interconnected, and demand is volatile and unpredictable everywhere as a result of ongoing uncertainty related to the pandemic. Therefore, all resulting cancellations are outside the airline's control.

Most recently, for example, the government of Canada banned flights to/from the UK with no forewarning, which had an impact not only on UK flights, but also on domestic and transborder routes feeding into these flights.

Air Canada starts selling flights 360 days in advance. When would be the appropriate time to predict the possible cancellation of domestic and transborder routes feeding its international network? April 1st during the first wave? June 30th when infection levels had come down in Canada? September before or after the varying provincial restrictions? December 20th after the airspace was closed on 24 hours' notice? Following the announcement on 7-days' notice on PCR testing? These events have been ongoing, relentless, and unpredictable.

Given the interconnected nature of our network, their effects contribute to overall low demand on *all* flights. Demand on one flight cannot be linked to a particular uncontrollable event. There is no, and has been no, trend or foreseeability to passenger demand throughout the pandemic.

8. The CTA will consider the legal frameworks in the European Union (EU) and the United States (US) in developing the new regulation on refunds. What particular aspects of these frameworks should the CTA consider?

Europe

The refund requirement found in EC Regulation No. 261/2004 ("EC261") was widely criticized from the onset of the pandemic. Legal experts have argued that "[f]rom a balance of interests perspective, forcing airlines to make potentially substantial and swift reimbursements would be in breach of the principle of proportionality."¹⁴

Significant efforts were made by governments across Europe to suspend the requirement¹⁵, with some EU member states even adopting provisions to eliminate or circumvent the refund requirements¹⁶.

IATA proposed the use of vouchers early on, with their CEO stating that "vouchers that could be used for future travel or refunded once we are out of this crisis period. This would buy the industry vital time to breathe—surviving the crisis so that they are ready to fly when better days arrive."¹⁷

While efforts to urgently amend EC261 failed, the European Commission recognized the significant constraints on airline liquidity and sought to incentivize the use of vouchers¹⁸

¹⁴ <https://www.internationallawoffice.com/Newsletters/Aviation/European-Union/Augusta-Abogados/COVID-19-non-application-of-reimbursement-obligations-under-EU-Flight-Delay-Compensation-Regulation>

¹⁵ <https://www.aviation24.be/miscellaneous/passenger-rights/coronavirus-twelve-eu-member-states-ask-commission-to-amend-regulation-ec-261-2004-to-allow-issuance-of-vouchers-in-lieu-of-refund/>

¹⁶ Italy (Article 28.8 of Decree-Law 9/2020 and Article 88.1 of Decree-Law 18/2020), Greece (Article 70 of the Act of Law issued on 13 April 2020), Spain (Article 36 of Royal Decree-Law 11/2020)

¹⁷ <https://www.iata.org/en/pressroom/ceoblog/passenger-tickets-refunds/>

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1591191111789&uri=CELEX:52020DC0550>

during the pandemic throughout the travel trade, to reduce refunds, impact on liquidity, and enhance customer confidence: “Consumer and passenger organisations at Union and national level should encourage travellers and passengers to accept vouchers that present characteristics as described in this Recommendation, instead of reimbursement in money.”

Canada should avoid replicating rules that were considered too inflexible and learn from the European lesson and support the use of vouchers, as it has to date, instead of refunds, during large-scale uncontrollable events affecting a large portion of a carrier’s network.

United States

There is no regulatory framework in the US requiring the refunds for delays or cancellations outside a carrier’s control, or for situations in which a carrier cannot reroute within reasonable time.

Both the Enforcement Notice and the Department of Transportation’s (DOT) COVID-19 Refund FAQs constitute agency guidance documents, as opposed to properly issued regulations. In fact, the Department’s COVID-19 Refund FAQs document acknowledges that it “does not have the force and effect of law and is not meant to bind the regulated entities in any way”.

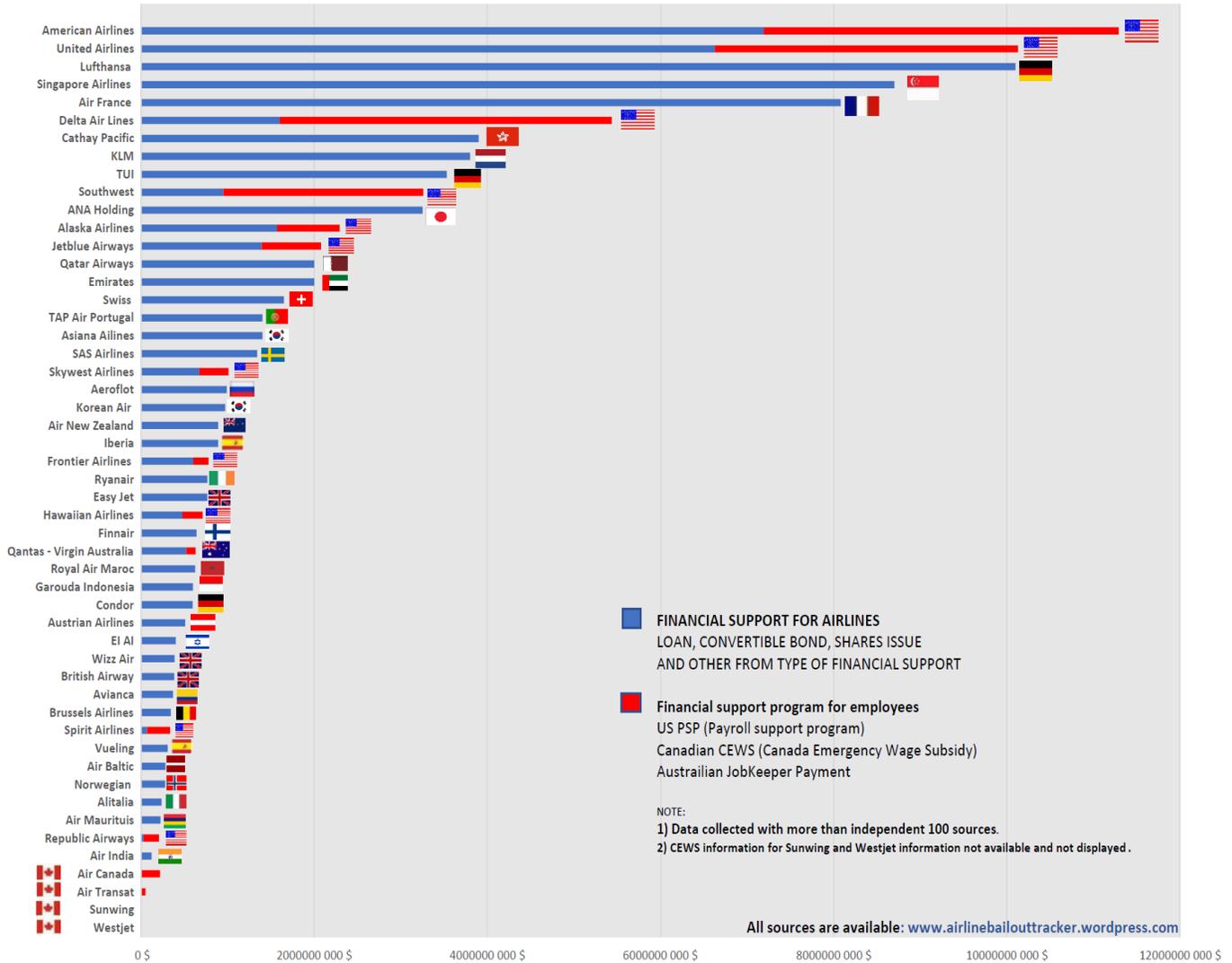
The US DOT may evaluate potential violations of 49 U.S.C. § 41712 under an unfair and deceptive practices standard that is informally based, in part, on the Federal Trade Commission’s (“FTC”) “unfairness” test,¹⁹ which provides that an act or practice is unfair where it (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers; and (3) is not outweighed by countervailing benefits to consumers or to competition.²⁰ These criteria have not been fully evaluated and analysed in relation to the airline refund policies during the COVID-19 crisis, and no legally binding conclusion has been drawn that these policies are unfair or deceptive.

¹⁹ The FTC’s “unfairness test” is codified by statute, 15 U.S.C. § 45(n).

²⁰ The DOT has finalized a Rulemaking process to Defining Unfair or Deceptive Practices <https://beta.regulations.gov/document/DOT-OST-2019-0182-0233> (November 27, 2020).

Annex 2 to the Agency's Consultation on New Refund Requirements

Financial support from Governments for Airlines (USD) March 1, 2020 - October 1, 2020



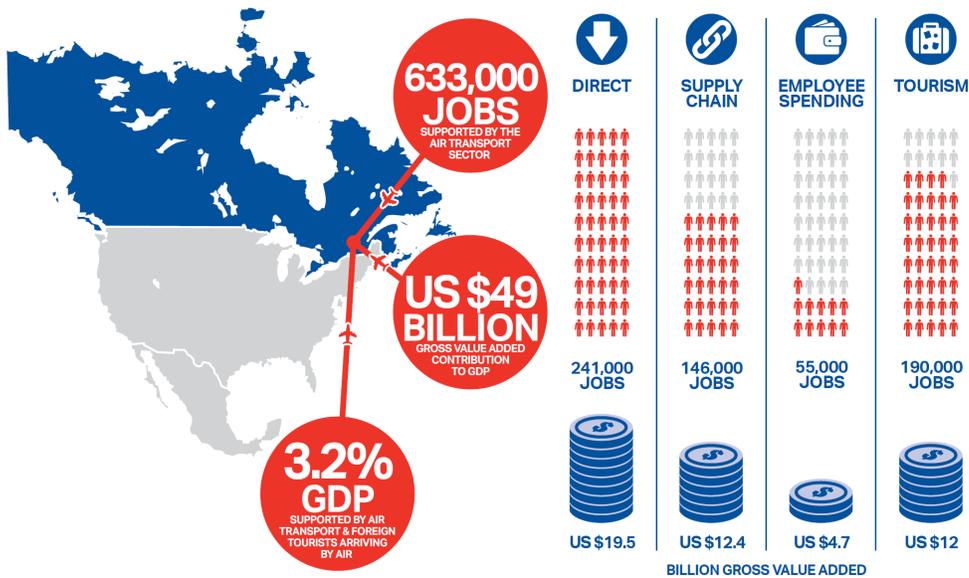
Updated October 1, 2020 by Samy MSeffar

**Annex 3
to the Agency's Consultation on New Refund Requirements**



The air transport sector makes a major contribution to Canada's economy

There are different ways of measuring air transport's impact on an economy. We look at three: the jobs and spending generated by airlines and their supply chain, the flows of trade, tourism and investment resulting from users of all airlines serving the country, and the city pair connections that make these flows possible. All provide a different but illuminating perspective on the importance of air transport.



Source: Oxford Economics¹

The air transport sector supports jobs...

Airlines, airport operators, airport on-site enterprises (restaurants and retail), aircraft manufacturers, and the air navigation service provider employ 241,000 people in Canada. In addition, by buying goods and services from local suppliers the sector supported another 146,000 jobs. On top of this, the sector is estimated to support a further 55,000 jobs through the wages it pays its employees, some or all of

which are subsequently spent on consumer goods and services. Foreign tourists arriving by air to Canada, who spend their money in the local economy, are estimated to support an additional 190,000 jobs. In total 633,000 jobs are supported by air transport and tourists arriving by air.

...and spending

The air transport industry, including airlines, and its supply chain, are estimated to support

US \$37 billion of GDP in Canada. Spending by foreign tourists supports a further US \$12 billion of the country's GDP, totaling to US \$49 billion. In total, 3.2 percent of the country's GDP is supported by inputs to the air transport sector and foreign tourists arriving by air.

For forecasts of the industry's GDP and jobs contribution over the next 20 years see page 4

Air transport facilitates flows of goods, investment and people



Note: Data relate to all modes of transport. Foreign direct investment (FDI) figure represents inward stock.
Source: UNWTO, UNCTAD and World Bank²

The most important benefits from air transport go to passengers and shippers and the spillover impacts on their businesses. The value to passengers, shippers

and the economy can be seen from the spending of foreign tourists and the value of exports (though note these figures include all modes of transport). A key

economic flow, stimulated by good air transport connections, is foreign direct investment, creating productive assets that will generate a long-term flow of GDP.

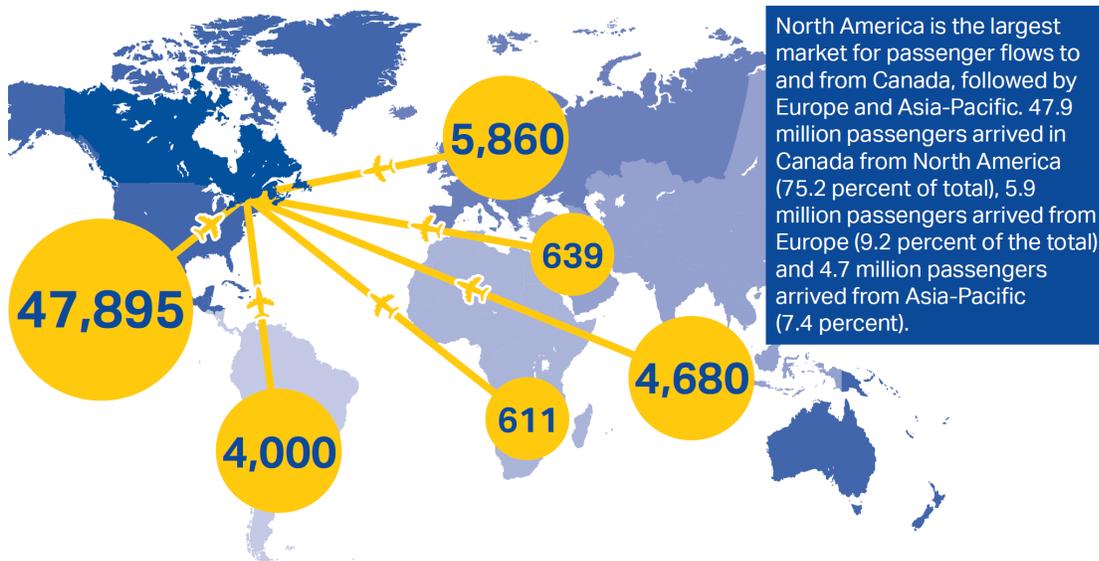
- Top five international tourist arrivals (all modes of transport) by country of residence³**
1. United States
 2. United Kingdom
 3. China
 4. France
 5. Germany

- Top five busiest direct flights arrivals**
1. United States
 2. Mexico
 3. Cuba
 4. United Kingdom
 5. People's Republic of China

- Top five busiest air cargo routes**
1. People's Republic of China
 2. United States
 3. United Kingdom
 4. Germany
 5. Japan

Source: UNWTO and IATA²

Annual passenger flows by region (origin-destination, '000s)

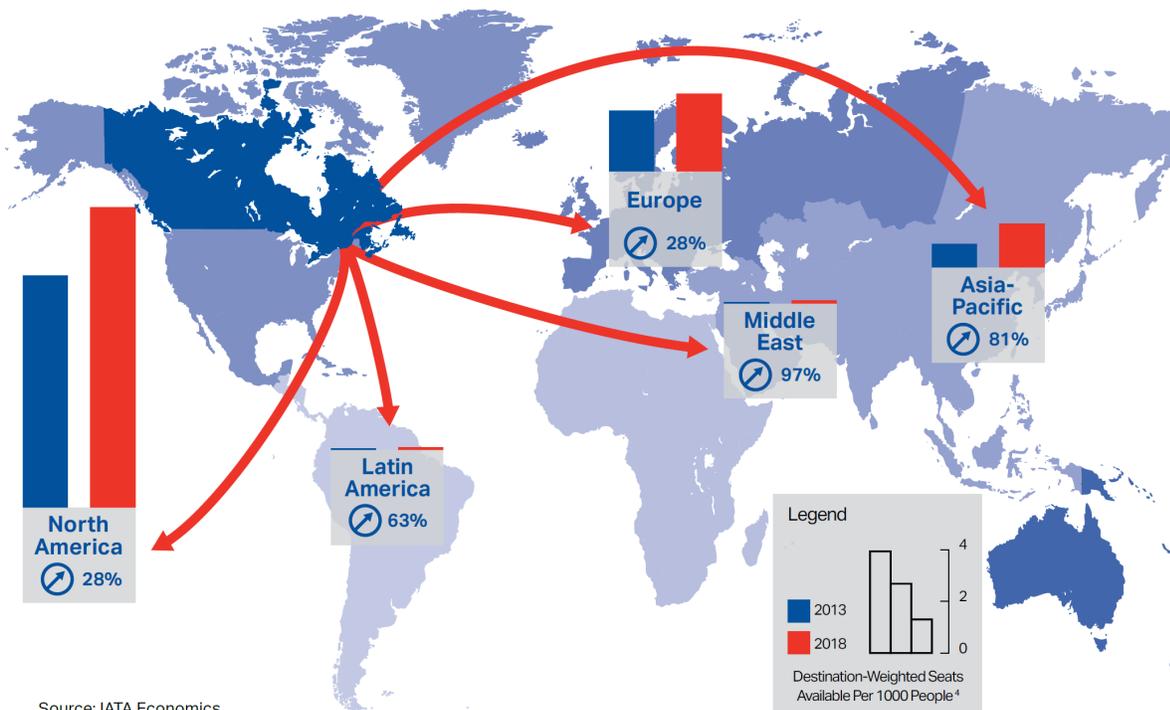


Source: IATA Direct Data Solutions

Air transport connects Canada to cities around the world

Air transport generates benefits to consumers and the wider economy by providing speedy connections between cities. These virtual bridges in the air enable the economic flows of goods, investments, people and ideas that are the fundamental drivers of economic growth.

Map of Canada's air connectivity, by its largest markets (segment basis)⁴



Source: IATA Economics

IATA's measure of how well a country is connected to economically important cities around the world is shown above. The map shows Canada's

connectivity by key regions of the world and its evolution. Canada's connections to the Middle East have grown the fastest over the last five years.

Number of international city pairs direct service in the top ten countries by passenger numbers in the world

- 23 United States
- 15 People's Republic of China
- 7 Japan
- 21 United Kingdom
- 3 India
- 0 Indonesia
- 5 Spain
- 12 Germany
- 1 Brazil
- 12 France



Source: IATA Economics



Source: IATA, Aviation Benefits Beyond Borders 2018 report

Ease of travel, cost competitiveness, and trade facilitation are vitally important

If air transport's unique contribution is the bridges it creates between cities, then the flows of goods, people, investment and ideas that stimulate economic development must flow unimpeded to maximise their contribution to consumers and the wider economy. Here we measure how freely goods and people flow across borders.

Passenger facilitation and cost competitiveness

Canada's passenger facilitation (6.5/10) scores slightly below the North American average (6.6/10). On the World Economic Forum's Travel & Tourism Competitiveness Index, the country ranks 120th for visa openness and 68th out of 136 countries for cost competitiveness⁵. In all these scores and ranks, higher is better.

Measures of air cargo trade facilitation

Canada's facilitation of air cargo through its customs and borders regulations ranks 9th out of 124 countries in terms of the Air Trade Facilitation Index (ATFI) and 7th out of 135 countries in terms of the eFreight Friendliness Index (EFFI) globally⁸.



Forecast scenarios for passenger traffic, jobs and GDP footprint⁹

Air transport in Canada is forecast to grow by 51% in the next 20 years under the "current trends" scenario. This would result in an additional 39.8 million passenger journeys by 2037. If met, this increased demand would support approximately US \$73.3 billion of GDP and almost 800,650 jobs.

	PASSENGERS	US \$ GDP	JOBS	
2017	78.7 m	\$48.7 bn	632,775	
2037	Current Trends	118.6 m	\$73.3 bn	800,649
	Upside	129.1 m	\$79.8 bn	872,833
	Downside	104.7 m	\$64.7 bn	706,036

¹ Source: Aviation Benefits Beyond Borders 2018 report (all currency is in United States dollars at 2016 prices).
² Data relate to 2017 or most recent.
³ Arrivals of non-resident tourists at national borders or in all types of accommodation establishments, by country of residence.
⁴ The air connectivity scores reported are total destination weighted seats per 1000 people. IATA developed the Air Connectivity Indicator calculated based on the total route capacity (in terms of seats available) weighted by the destination airport's relative capacity (calculated as the ratio of seats available at that airport relative to the capacity at the airport with most available seats) divided by the population size of the country with a 0.15% of connectivity threshold in 2013.
⁵ Based on ticket taxes, airport charges and VAT (10=low cost, 0=high cost). Source: WEF, Travel & Tourism Competitiveness Report 2017.
⁶ Passenger facilitation, one of the Air Transport Regulatory Competitiveness Indicators developed by IATA in 2018, looks at the ease of people moving around the globe and how the governments facilitate this process. It assesses the performance of economies on implementation of open skies agreements, advance passenger information and automated border control systems and visa requirements.
⁷ Entry visa requirements for a tourism visit from worldwide source markets (10 = no visa required for visitors from all source markets, 0 = traditional visa required for visitors from every source market). Source: WEF, Travel & Tourism Competitiveness Report 2017.
⁸ The IATA Air Trade Facilitation Index (ATFI) measures the extent to which a country facilitates air cargo through its customs and borders processes and regulations. The IATA E-freight Friendliness Index (EFFI) assesses the actual penetration of electronic transactions and documents in air cargo shipments (Value of Air Cargo 2016 report).
⁹ Passengers are counted as departures, including connections. The passenger forecasts are based on the IATA 20-year passenger forecast (October 2018). Data on GDP and jobs 2017 are from Oxford Economics. GDP and jobs forecasts are from IATA Economics.
 * All data relate to 2018 or most recent unless stated otherwise.

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