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**VIA EMAIL**

February 24, 2021

**RE: Temporary Exemptions from Certain APPR Provisions – Response to Public Consultation**

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Dear Madam, Sir,

Air Canada and Jazz Aviation L.P. hereby respond to the submissions received by the Canadian Transportation Agency (the “**Agency**”) during the consultation period regarding temporary exemptions from the Air Passenger Protection Regulations (the “APPR exemptions”).

For clarity and ease of reference, the response is provided by topic rather than by submission.

<u>Topic</u>	<u>Allegation</u>	<u>Response</u>
Agency’s Jurisdiction	The Agency has no jurisdiction to grant an industry-wide exemption by way of an order. It may only be granted by way of regulation and requires the approval of the Governor-In-Council. <sup>1</sup>	As the Agency confirmed in Determination No. A-2020-47, the Agency has full discretion to issue orders exempting persons from APPR pursuant to Section 80(1) of the Act. This power is for both physical and moral persons. The circumstances caused by global pandemic are unique and exceptional while also being common to all airlines.
	The Agency has no jurisdiction to grant a retroactive exemption. The CTA may only grant an exemption that comes into force effective immediately or at a future time. <sup>2</sup>	Air Canada had sought an extension of the APPR exemptions from June 30, 2020 onwards, which was initially denied. Air Canada is now seeking a revision of that denial. A decision from the Agency would not cause exemptions to apply retroactively but instead to continue from June 30, 2020 as initially sought.  Furthermore, the Agency has not handled any passenger complaints on the topics that are the subject of the requested APPR exemptions, so it is not too late.
Procedural Fairness	The consultation is procedurally unfair to consumers and consumer advocacy groups, who cannot ask	The matter before the Agency is a request for an exemption pursuant to Section 80 of the Act. There is no opposing party as there would be in a complaint for the consumers and consumer advocacy groups to seek answers and productions

<sup>1</sup> Submissions of Air Passenger Rights.

<sup>2</sup> Submissions of Air Passenger Rights.

	questions and seek productions from the airlines. <sup>3</sup>	against. The Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings) SOR/2014-104 do not apply in the context of a request for exemption, which, as it happens, the Agency was not even required to open to public consultation.
Inaccurate and Unreliable Data	For the months of July, August, and September 2020, the sum of the number of passengers who allegedly “booked 3-14 days in advance” and “booked at least 14 days in advance” exceeds by thousands the total number of passengers transported. <sup>4</sup>	Passengers who booked may have subsequently cancelled, or the carrier may have cancelled the flight. Therefore, the total of passengers transported in the context of this devastating pandemic is inevitably much lower than the number of passengers who initially booked.
	The reference to percentages, such as “Passengers who cancelled 3-14 days in advance as a % of the passengers who booked at least 14 days in advance,” is questionable as “passengers who cancelled 3-14 days in advance” is not a subset of “passengers who booked at least 14 days in advance.” <sup>5</sup>	This number provides the number of passengers who, having booked more than 14 days in advance, cancelled close to departure. This ratio is one measure, amongst others, of the volatility of passenger demand close to departure and inability for carriers to predict demand. As explained in previous submissions, looking at passenger cancellation volumes <i>at any time during the booking window</i> is uninformative: passenger cancellation volumes are high in normal times: groups, for example, regularly book and then cancel far out before departure, at no cost. Other airlines or travel agents will also book and not ticket, and then cancel at no cost (not close to departure). We expect this attrition and can manage it.  The is very different from the cancellation trends since March 2020, which are happening very close to departure, in an erratic, unpredictable fashion.
	There is a fundamental flaw in the data supplied by the applicants in that it fails to distinguish ticket cancellations that were preceded by flight cancellations and fails to distinguish between passengers who both booked and cancelled	Air Canada does not believe that there is a flaw in the data. Should the Agency require further clarification or explanation of the data provided, we would be pleased to provide it.

<sup>3</sup> Submissions of Air Passenger Rights.

<sup>4</sup> Submissions of Air Passenger Rights.

<sup>5</sup> Submissions of Air Passenger Rights.

	within the 3-14 day period and those who only booked or only cancelled in that time frame. <sup>6</sup>	
False Advertising	Carriers have failed to adapt their inventory to the reality of the pandemic and are selling schedules that they have little hope of actually flying. <sup>7</sup>	<p>Airlines are faced with unprecedented variations in demand, and last-minute, unforeseeable changes in travel restrictions and market closures. Airlines are unable to accurately predict demand using their usual models, or even using “best guesses”. In some cases, Air Canada has removed flying on certain routes, expecting no demand, and has had to quickly reinstate them in light of a sudden surge. Some routes cannot be quickly reinstated, as they have a long booking window, and are even more difficult to forecast in the current environment. Conversely, on some flights, a large proportion of booked passengers simply do not show up for the flight. The usual mix of business travelers, leisure travelers, and Visiting Friends and Family travelers has also changed tremendously, making forecasting even more challenging.</p> <p>As long as Air Canada attempts to operate to serve those passengers who do need to travel, as opposed to ceasing operations, it is wholly unreasonable to expect carriers to be in a position to make scheduling decisions weeks or months prior to scheduled departures, given the exceptionally high number of close in bookings and close in passenger cancellations and no-shows.</p>
Agency’s Role	The Agency’s role is to protect Canadian consumers as opposed to the financial well-being of airlines. <sup>8</sup>	<p>The Agency has a multi-faceted role which includes ensuring a competitive, economic and efficient national transportation system. This necessarily includes the financial well-being and international competitiveness of Canadian airlines, which is at risk due to the ongoing devastation of the pandemic and the lack of sectoral-specific aid.</p> <p>To state that the Agency’s role is to “protect Canadian consumers” would put the Agency’s impartiality into question, by assuming it has or must have a pro-consumer approach to its decision-making process. On the contrary, the Agency is, and must remain, an impartial quasi-judicial tribunal.</p>

<sup>6</sup> Submissions of Air Passenger Rights.

<sup>7</sup> Submissions of Air Passenger Rights, CAA, OPC, PIAC, Garrett Wellwood, James Young.

<sup>8</sup> Submissions of PIAC, Garrett Wellwood, Tina Vessair.

Finally, Air Canada's submission of September 2, 2020 requested that the APPR exemptions granted by Determination No. A-2020-42 be renewed from their original date of expiry on June 30, 2020 to December 31, 2020, as well as an expansion of said exemption. Given the evident and ongoing scope of the global pandemic, Air Canada and Jazz Aviation L.P. amend that request to the earliest of December 31, 2021 or the complete removal of all government travel restrictions in the major markets in which Canadian carriers operate.

All of which is respectfully submitted.



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