

**CONSULTATION ON THE REQUIREMENT TO IDENTIFY A BASIC FARE:
SUBMISSIONS OF THE WESTJET GROUP OF COMPANIES**

Please find below the submissions of the WestJet Group of Companies (“WestJet”) in response to the public consultations being undertaken by the Canadian Transportation Agency on the “basic fare requirement” implemented by sections 55 and 67(1)(b) of the *Canada Transportation Act* (S.C. 1996, c. 10).

1. The Law

The *Canada Transportation Act*, S.C. 1996, c. 10 (the “Act”) includes the following provisions:

67 (1) The holder of a domestic licence shall

(...)

(b) in its tariffs, specifically identify the **basic fare** between all points for which a domestic service is offered by the licensee; and

(...)

55.

basic fare means

(a) the fare in the tariff of the holder of a domestic licence that has no restrictions and represents the lowest amount to be paid for one-way air transportation of an adult with reasonable baggage between two points in Canada, or

(b) where the licensee has more than one such fare between two points in Canada and the amount of any of those fares is dependent on the time of day or day of the week of travel, or both, the highest of those fares; (prix de base)

(...)

80 (1) The Agency may, by order, on such terms and conditions as it deems appropriate, exempt a person from the application of any of the provisions of this Part or of a regulation or order made under this Part where the Agency is of the opinion that

- (a) the person has substantially complied with the provision;
 - (b) an action taken by the person is as effective as actual compliance with the provision; or
 - (c) compliance with the provision by the person is unnecessary, undesirable or impractical.
- (our emphasis)

2. Prevalence of Basic Fares

As can be seen from the above, section 67(1)(b) of the Act requires that a carrier include in its tariffs the fare with no restrictions that represents the lowest amount to be paid for one way air transportation of an adult with reasonable baggage between any two points for which it offers a domestic service. If the carrier has more than one such fare between two points and the amount is dependent on the time of day or day of week of travel, the carrier must specifically identify the highest of those fares.

Upon review, it appears that most Canadian carriers currently operating a domestic service are not in strict compliance with this requirement. The majority of Canadian carriers' domestic tariffs do not specifically identify every domestic route operated by the carrier between two points in Canada, nor do they identify a specific fare amount for every domestic route. This applies equally to the domestic tariffs of both regular commercial air carriers and carriers operating as ultra-low cost carriers ("ULCCs").

3. Relevance of Basic Fares

In 1996, the Act replaced the *1987 National Transportation Act*, S.C. 1987, c. 34 (the "Former Act"). The equivalent to section 67(1)(b) of the Act in the Former Act is identical to the provision currently in force. The following definition of "basic fare" was included in the Former Act (it is almost identical to the current provision):

"basic fare" means

- (a) subject to paragraph (b), the fare in the tariff of the holder of a domestic licence that is not a premium fare, has no restrictions in respect thereof and represents the lowest amount to be paid for one-way air transportation of an adult with reasonable baggage between two points in Canada, or
- (b) where the licensee has more than one such fare between two points in Canada and the amount of any of those fares is dependent on the time of day or day of the week, or both, of travel, the highest of those fares.

There have been no substantive changes to the provisions at issue in this consultation since 1987. This means that these provisions predate the internet. In 1987, the information available to passengers would have been much more limited than it is now. The internet has revolutionized and transformed the air travel marketplace. Through the use of the internet, passengers are now able to quickly and easily identify the lowest fare in the marketplace for domestic air travel. Furthermore, carriers have their own websites where they can clearly communicate the pricing of air fares. Passengers seeking to purchase air travel itineraries obtain information regarding the fares available and applicable fees from the carrier's website or from third party travel agencies, not from the carrier's tariff itself. Through its website, a carrier can quickly update prices for fares as they change, and can do so much more easily than through the amendment of its tariff filed with the CTA.

It appears that the only practical means of compliance with section 67(1)(b) and section 55 of the Act would be to publish an arbitrary "basic fare" in a carrier's tariff for every domestic route that the carrier operates in Canada. As most carriers have more than one fare between two points, this "basic fare" would have to be much higher than the majority of fares available in the marketplace. As such, WestJet submits that there is no relevance of a basic fare to passengers as the fares offered by carriers would almost always be significantly lower than any amount that could be identified as being the "basic fare". Furthermore, passengers can already access carriers' websites and find the lowest available fare and calculate the fees they will be charged for travel with carry-on or checked baggage.

Carriers' tariffs also clearly identify the fare rules, baggage restrictions, and all other relevant information for a passenger, such that the identification of a "basic fare" would not be helpful to passengers. We also note that the legislation does not define what constitutes "reasonable baggage" for an adult travelling on a one-way ticket between two points.

4. Impact of Basic Fare Requirement

The business model of a ULCC (such as Swoop Inc.) means that its primary objective is to provide the lowest fare in the air travel marketplace by allowing passengers to book only a seat on an aircraft. Passengers can then choose from an "a la carte" menu of options (baggage, seating, etc.) as desired. This allows a passenger to purchase only the services that he/she wants. By enforcing a provision requiring ULCCs to identify a "basic fare" which includes an undefined amount of "reasonable baggage", the CTA would hinder the ability for ULCCs to compete in the marketplace.

As noted in the CTA's Determination No. A-2019-14:

In the specific context of the ULCC's business model—which is particularly characterized by dynamic price setting, non-refundable fares with restrictions on changes, and the unbundling of fares so that travellers select the services for which they want to pay—the obligation to include such a basic fare in the tariff would appear to have no material benefit to passengers and to impose an unnecessary administrative burden.

WestJet submits that granting an exemption to carriers from compliance with section 67(1)(b) of the Act will not detract from industry competitiveness overall. In addition, ULCCs operate in a distinct area of the air travel marketplace. The ability to offer reduced fares through unbundling of fees means that passengers will have access to lower fares and greater flexibility than would otherwise be available, promoting healthy competition in the marketplace.

5. Compliance with the Basic Fare Requirement is “unnecessary, undesirable, or impractical”.

A ULCC’s business model means that in almost all cases, the fare paid by a guest would be significantly lower than any “basic fare” that could practically be listed in its tariff. Furthermore, all of the rules regarding fare categories and baggage fees are set out clearly in a carrier’s tariff and on its website. As such, there would be no benefit to requiring that carriers list “basic fares” in their tariffs and compliance with section 67(1)(b) is unnecessary and impractical.

On a carrier’s website, a consumer can input the airport of departure, airport of arrival, and the date of departure, and the website will show the lowest available fares for that date. Once the consumer enters the type and number of pieces of baggage they will be traveling with, the website generates the respective fees, and the consumer can quickly and efficiently determine the cost of their itinerary. They can also quickly and easily compare this amount to the cost of travel with an alternative carrier, through carrier websites or third party travel agents.

While carriers can quickly and efficiently update prices of fares on their websites, tariffs are completely static documents and changes to a tariff require the filing of an amended tariff through the ATPCO service. The constant updates, amendments, and filings of amended tariffs that would be necessitated by strict compliance with section 67(1)(b) of the Act would add an enormous unnecessary and impractical administrative burden for Canadian carriers.